Tonga

CRIMINAL OFFENCES ACT

Chapter 10.09

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CRIMINAL OFFENCES ACT

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CRIMINAL OFFENCES ACT

AN ACT RELATING TO CRIMINAL OFFENCES[1]

Commencement [6th September, 1926]

1 Short title

This Act may be cited as the Criminal Offences Act.

2 Interpretation

In this Act unless the context otherwise requires —

"**cattle**" means the male, female or young of any animal of the following kinds, namely: horse, ass, mule, kine, sheep, goat or swine;

"**Court**" means the Supreme Court or a Magistrate's Court;

"**currency**" includes paper money, Treasury Notes, Bank Notes and metallic money the circulation of which is legally authorized;[2]

"**night**" means the time between the hour of 6 in the evening of any day and the hour of 6 in the following morning;[3]

"**official seal**" means any seal or stamp used by the officials of any Government or any department or agency thereof to authenticate their official acts, and includes any device, seal or stamp which makes an impression which so closely resembles that of any official seal so as to be likely to deceive;[4]

"**public place**" means any road, highway, street, market, place or wharf and includes any building or vessel to which for the time being the public are entitled or permitted to have access either without any condition or upon

conditions of making any payment and any building or place to which the public have the right of access or which is for the time being used for any public or religious meeting or assembly or as an open Court;

"**valuable security**" means any document which entitles or is evidence of the title of any person to anything or proprietary right of any kind whatsoever and for the purposes of this Act a valuable security shall be deemed to be of the same value as the title to the thing or proprietary right which such security is evidence of and postage stamps shall be deemed to be of the same values as are specified on their faces;

"**vessel**" means every kind of ship, punt, boat or raft.

3 Accused not to be convicted of offence not charged

Except where otherwise provided in this Act no person charged with an offence shall be found guilty of any other offence on the evidence submitted to the Court, if such evidence is insufficient to establish the offence with which such person is charged.[5]

PART I - ATTEMPTS

4 Definition of attempt

(1) An attempt to commit an offence is an act done or omitted with intent to commit that offence forming part of a series of acts or omissions which would have constituted the offence if such series of acts or omissions had not been interrupted by the voluntary determination of the offender not to complete the offence or by some other cause.

(2) A person who attempts to commit an offence by any means shall not be acquitted on the ground that by reason of the imperfection or other condition of the means or by reason of the circumstances affecting the person against whom or the thing in respect of which the crime was intended to be committed it was not possible to commit the crime according to his intent.

Illustrations

A points a gun at B believing it to be loaded and meaning immediately to discharge it at him. A is guilty of an attempt to harm B although the gun is not, in fact, loaded.

A puts his hand into B's pocket intending to steal. A is guilty of an attempt to steal although there is nothing in the pocket.

5 Punishment for attempts

(1) Every person who attempts to commit any offence punishable by imprisonment shall (unless the punishment for an attempt to commit such offence is otherwise expressly specified by law) be liable to imprisonment for a period not exceeding one-half of the longest period to which a person actually committing that offence might be lawfully sentenced.

(2) Every person who attempts to commit any offence punishable by fine shall (unless the punishment for an attempt to commit such offence is otherwise expressly specified by law) be liable to a fine not exceeding one-half of the maximum fine which a person who had actually committed the said offence might be sentenced to pay.

6 Conviction for attempt on charge of offence

Where the complete commission of the offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused person may be convicted of this attempt and punished accordingly:

Provided that after a conviction for the attempt the person so convicted shall not be liable to be tried again for the offence which he was charged with committing.

7 Conviction for attempt when full offence proved

Where an attempt to commit an offence is charged but the evidence established the commission of the full offence the accused shall not be entitled to be discharged but he may be convicted of the attempt and punished accordingly:

Provided that after a conviction for the attempt the accused person shall not be liable to be tried again for the offence which he was charged with attempting to commit.

PART II - ABETMENT, HARBOURING CRIMINALS, CONSPIRACY, ETC.

8 Abetment of crime and punishment of abettor

Every person who directly or indirectly commands, incites, encourages or procures the commission of an offence by any other person and every person who knowingly does any act for the purpose of facilitating the commission of an offence by any other person is an abettor and shall (unless otherwise expressly specified by any enactment) —

(a) where the offence is actually committed in pursuance or during the continuance of such abetment be liable to the same punishment as if he himself had actually committed that offence; and

(b) where the offence is not actually committed shall be liable where the offence abetted was murder to imprisonment for life or any less period and in the case of abetment of any other offence to imprisonment for a period not exceeding one-half of the longest period to which a person committing that offence might be sentenced or to a fine not exceeding one-half of the maximum fine which a person committing that offence might be sentenced to pay.

Illustrations

A and B are fighting unlawfully; C and others hinder a police officer from stopping the fight. C and the others are guilty of abetting the fight.

A offers B $10 to assault C. A is guilty of abetting an assault on C.

A encourages B to break and enter a shop. If B is discovered and arrested while attempting to do so, A will be liable on a charge of abetting to imprisonment for five years, one-half of the longest sentence that can be imposed for housebreaking. If B actually completes the offence of housebreaking, A is liable to 10 years' imprisonment.

9 Jurisdiction

Whoever abets an offence shall be punishable in the Supreme Court or in the Magistrate's Court according as he would be punishable if he had committed that offence.

10 Trial

An abettor may be tried before with or after a person abetted and although the person abetted is dead or is otherwise not amenable to justice.

11 Proof

Every person who counsels, incites or procures another to commit an offence which that other afterwards commits is an abettor of that offence although it may be committed in a different manner from that which was counselled.

Illustration

A incites B to murder C by shooting him. B commits the murder by poisoning C. A is an abettor of B's crime.

12 Abettor deemed a party to any offence committed as a result of his counselling

Every person who counsels, incites or procures another to commit an offence is a party to every offence which that other commits in consequence of such counselling, inciting or procuring and which the person counselling, inciting or procuring knew or ought to have known would be likely to be committed in consequence of such counselling, inciting or procuring.

Illustrations

A incites B to steal from C. B in attempting to do so is discovered by C and murders him. Here A is guilty only of abetting theft and not of abetting murder.

13 Harbouring criminals

Every person who knowing or having reason to believe that any person has —

(a) committed an offence;

(b) been charged by any prosecuting authority with any offence;

(c) been issued with a summons by any Court in respect of any offence;

(d) been remanded for or is awaiting trial in any Court in respect of any offence; or

(e) been convicted of any offence,

does without lawful authority or reasonable excuse any act with intent to impede his apprehension, prosecution or the execution of the sentence is guilty of an offence and is liable on conviction on indictment to imprisonment for any period not exceeding 3 years.[6]

14 Compounding crimes

(1) Every person who —

(a) offers or agrees to forbear from prosecuting or giving evidence against a person on a criminal charge in consideration of money or any other valuable thing or any advantage whatsoever to himself or to any other person; or

(b) accepts or agrees to accept or offers to accept any reward upon pretence or on account of restoring to any person or of helping any person to recover anything which has been stolen or otherwise dishonestly appropriated by any crime punishable under Part X of this Act upon the understanding that no prosecution on account of the offence shall be proceeded with,

shall be liable to imprisonment for any period not exceeding 2 years.

(2) Where a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any persons or property, or tending to show that he has information material to any police inquiry, he is guilty of an offence and is liable on summary conviction to a fine not exceeding $500 or to imprisonment for any period not exceeding 6 months.[7]

15 Conspiracy

(1) If 2 or more persons agree to act together with a common purpose in order to commit or abet an offence whether with or without any previous concert or deliberation each of them is guilty of conspiracy to commit or abet that offence as the case may be.

(2) If 2 or more persons are guilty of conspiracy to commit or abet any offence each of them shall in case the offence is committed be liable to be punished as if he had actually committed that offence or shall in case the offence is not committed be punished as if he had abetted that offence.

PART III - EXEMPTIONS FROM CRIMINAL RESPONSIBILITY AND RESPONSIBILITY FOR ACTS OF INVOLUNTARY AGENTS

16 Criminal liability of children

(1) Nothing shall be deemed an offence which is done by a person under 7 years of age.

(2) Nothing shall be deemed an offence which is done by a person of or above 7 and under 12 years of age unless in the opinion of the Court or jury such person had attained sufficient maturity of understanding to be aware of the nature and consequences of his conduct in regard to the act of which he is accused.

Illustrations

Subsection (1). A aged 6 years throws a stone at and wounds B. A cannot be convicted.

Subsection (2). A aged 8 years steals a ring. A ought to be convicted if the Magistrate or the jury think that A was aware he was committing an offence.

17 Person suffering from mental disease

(1) A person shall not be responsible at law for an act or omission charged against him as an offence if at the time of doing the act or making the omission he is proved to have been insane in that he was suffering from such a state of mental disease as to deprive him —

(a) of capacity to understand the physical nature and quality of such act or omission; or

(b) of capacity to understand that such act or omission was wrong.[8]

(2) A person who is suffering from mental disease at the time of doing the act or making the omission charged against him as an offence and who owing to such mental disease is affected by delusions on some matter or matters but whose mental condition does not render him irresponsible at law within the meaning of subsection (1) is criminally responsible to the same extent as if the facts with respect to which such delusions exist were real.

18 Procedure where accused on arraignment appears to be insane

If any accused person appears before or upon arraignment in the Supreme Court to be insane, a jury may be sworn to try whether he is sane or insane and the jury after hearing evidence for that purpose shall find whether or not he is insane and unfit to take his trial:

Provided that a verdict under this section finding an accused person to be insane shall not prevent such person from being tried for the offence with which he is charged in case he subsequently becomes of sound mind.

19 Procedure where accused was insane at time of committing the crime

If upon the trial in the Supreme Court of any person against whom any act or omission is charged as an offence, evidence is given that such person at the time when such act or omission took place was insane within the meaning of section 17 hereof, then if it appears to the jury or to the Court when it is sitting without a jury that he was so insane as aforesaid at the time when such act or omission took place the jury or the Court, as the case may be shall return a special verdict that the accused is not guilty because he was insane at the time when he did the act or made the omission.[9]

20 Custody of accused person found to be insane

Where any person is found to be insane under the provisions of either section 18 or section 19 hereof the Court shall order him to be detained in safe custody in such manner and place as it determines. [10]

21 Intoxication

(1) Save as provided in this section intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged, at the time of the act or omission complained of, did not know that such act or omission was wrong or did not know what he was doing and —

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b) the person charged was by reason of intoxication insane temporarily or otherwise at the time of such act or omission.

(3) Where the defence under the preceding subsection is established then in a case falling under paragraph (a) thereof the accused person shall be discharged and in a case failing under paragraph (b) the provisions of this Act relating to insane persons shall apply.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention specific or otherwise in the absence of which he would not be guilty of the offence.

(5) For the purpose of this section "intoxication" shall be deemed to include a state produced by narcotics or drugs.[11]

22 Married women

A married woman committing an offence in the presence of her husband shall not be presumed to have committed it under his compulsion.

23 Involuntary agents

Every person intentionally or negligently causing any involuntary agent to cause an event shall himself be deemed to have caused such event.

"**Involuntary agent**" means any animal or other thing and also any person who is exempt from liability to punishment for causing the event by reason of infancy, insanity or otherwise under the provisions of this Part of this Act.

Illustrations

A induces a child under 7 years of age to steal a thing for him. A is guilty of theft.

A causes a dog to attack and grievously hurt B. A is guilty of the harm caused to B.

PART IV - PUNISHMENT

24 Different kinds of punishment

(1) The following punishments may be inflicted —

(a) payment of compensation;

(b) community service order;

(c) fine;

(d) whipping;

(e) imprisonment; and

(f) death.[12]

(2) (a) It shall be lawful at the discretion of the Court, for the infliction of punishment (other than punishment by death) to be deferred for any period not exceeding 12 months from the date of conviction.

(b) Where punishment is deferred under the foregoing paragraph, it shall be lawful for sentence to be passed on the first convenient day after the expiration of the period of deferment ordered by the Court, save that any person who is convicted of a further offence after the Court has deferred sentence shall be sentenced for the offence for which sentence was deferred at the same time as he is being sentenced for that further offence.[13]

(3) (a) It shall be lawful for the Court when imposing a sentence of imprisonment to suspend the whole or part of such sentence for any period up to 3 years.

(b) Such sentence will be conditional on the offender not being convicted of an offence punishable by imprisonment committed during the period of suspension.[14]

(c) In the event of the offender being convicted of an offence punishable by imprisonment committed during the period of suspension he will thereupon be sentenced to serve the term of the suspended sentence in addition to the punishment imposed for such subsequent offence.[15]

(d) The Court may also impose conditions during the period of suspension of sentence, including a requirement that supervision by a probation officer or another responsible member of the community takes place. A breach of such conditions may, upon application, result in the rescission of the suspensions order.[16]

(e) In special circumstances the Court may release an offender from the operation of paragraph (c) and may extend the original period of suspension for a further period not exceeding 1 year.[17]

25 Payment of compensation

(1) Any person who is tried and convicted in the Supreme Court of an offence may be adjudged by the Court to make compensation to any person injured or suffering loss by his offence.

(2) Any person tried and convicted in a Magistrate's Court of an offence may be adjudged by the Court to make compensation not exceeding $5,000 to any person injured or suffering loss by his offence.[18]

(3) Any such compensation may be either in addition to or in substitution for any other punishment and in default of payment thereof the convicted person is liable to imprisonment for any period not exceeding 3 months.[19]

25A Community Service Orders[20]

(1) Subject to the provisions of this section, where a person is convicted of an offence punishable by imprisonment the Court may make a community service order requiring him to perform unpaid work for the benefit of the community.

(2) (a) The order shall specify —

(i) the number of hours to be worked, which shall be not less than 40 and not more than 200; [21]

(ii) the nature and location of the work.

(b) Subject to subsection (8), the work shall be completed within a maximum of 1 year from the date of the order.

(3) The Court shall not make a community service order unless it is satisfied that proper arrangements will be made for its supervision.[22]

(4) An offender who is subject to a community service order —

(a) shall report to his supervisor at such reasonable times as that officer may direct; and

(b) shall carry out the work for the number of hours specified in the order at such times as his supervisor may direct.

(5) The directions of the supervisor shall, so far as practicable, avoid any conflict with the offender's religious beliefs and any interference with times at which he is normally required to attend work, church or any educational establishment.

(6) (a) If an offender subject to a community service order fails to comply with the terms of that order the supervisor may issue a summons in the Court which made the order requesting that the order be revoked and the Court may issue a bench warrant to secure the attendance of the offender.[23]

(b) If the Court is satisfied that the offender has failed without reasonable excuse to comply with the terms of the order it may —

(i) impose a fine not exceeding $1,000 and direct that the order continue in force;[24] or

(ii) revoke the order and deal with him in any other manner appropriate to the offence in respect of which it was made.

(7) If any person subject to a community service order commits an offence punishable by imprisonment, the Court before which he is convicted may revoke the order and deal with him in any other manner appropriate to the offence in respect of which it was made.

(8) If, on the application by summons of the offender or the supervisor, the Court which made the order is satisfied that by reason of circumstances which have arisen since the order was made it would be just to do so, it may revoke or vary the order, and may extend the period within which the specified number of hours are to be worked.

(9) A community service order may be made either in addition to or in substitution for any other punishment and, without prejudice to subsection (6), it shall be lawful to order that in default of compliance with a community service order the offender shall be imprisoned for such period as is specified in the order.[25]

26 Fines

(1) Where a person convicted of an offence is sentenced to pay a fine the Court shall, by its sentence, direct that if the person fails to pay the fine at the time appointed he shall be imprisoned for a period not exceeding 3 months unless the fine is sooner paid.[26]

(2) Any imprisonment to which any person is sentenced and becomes subject under subsection (1) shall commence at the expiration of the imprisonment to which he is sentenced for his offence.[27]

27 Time may be granted for payment[28]

The Court imposing any fine or ordering the payment of compensation may grant time to pay the same provided that no longer period than 6 months shall be granted:

Provided that an offender may apply to the Magistrate's Court under section 27(2) of the Magistrate's Court Act for an order extending the time within which any fine or compensation must be paid.

28 Imprisonment for non-payment

Whenever an offender is imprisoned for non-payment of a fine, the period of his imprisonment shall be reckoned as beginning from the date on which he entered the prison and not from the date of his conviction.

29 Person imprisoned for non-payment of fine to be released on payment

(1) Any person imprisoned for non-payment of a fine may pay or cause to be paid to the keeper of the prison the sum specified in the warrant of commitment and the keeper shall receive the same and shall thereupon discharge the prisoner if he is not in custody for any other matter.[29]

Procedure on part payment of fine

(2) Where any such person as aforesaid pays or causes to be paid to the keeper of the prison any part of the sum specified in the warrant of commitment, the keeper shall discharge the prisoner (if not in custody for any other matter) as soon as he has completed a proportion of his sentence equal to that proportion of the sum specified in the warrant which still remains unpaid.

30 Power to impose fine instead of imprisonment

Where any person is convicted of any offence punishable by imprisonment such person may be sentenced to pay a fine in lieu thereof.[30]

31 Whipping

(1) It shall be unlawful to sentence any female to be whipped.

(2) Sentence of whipping may be passed upon a male offender only when the law expressly provides that the offence of which he has been convicted is punishable by whipping.

(3) A male offender may be sentenced to be whipped once or twice and the Court when pronouncing any such sentence shall specify the number of strokes to be inflicted on each occasion:

Provided that in the case of any male offender under 16 years of age the total number of strokes to which he is sentenced shall not exceed 20 and in the case of any other male offender the total number of strokes prescribed by such sentence shall not exceed 26. No person who has been whipped shall be again whipped within 14 days.[31]

(4) Every sentence of whipping shall be carried out by the chief gaoler or gaoler for the district within the prison precinct and in the presence of a Magistrate.

(5) Where the person sentenced to be whipped is a male under 16 years of age the whipping shall be inflicted on the breech with a light rod or cane composed of tamarind or other twigs. In the case of any other male offender the whipping shall be inflicted on the breech with a cat of a pattern approved by the Cabinet.[32]

(6) No sentence of whipping shall be carried out until the offender has been examined by a doctor or a Government medical assistant and certified by him that there is no mental or physical impairment of the offender such as to render him unfit to undergo such punishment.[33]

(7) No sentence of whipping shall be carried out on an adult unless ordered or approved on review by the Cabinet, and for the purposes of this subsection "adult" means a person who is 16 years of age and over.[34]

32 Imprisonment

Every person sentenced to imprisonment or committed to prison shall be subject to imprisonment with hard labour unless the contrary is expressed in the sentence or warrant.

33 Death sentence

(1) When any person is condemned to death the sentence shall be that such person shall be taken to the place of execution and there hanged by the neck until he is dead.

King's assent

(2) No sentence of death shall be carried into execution until the King with the consent of the Privy Council has signified assent thereto.

Power to commute

(3) It shall be lawful for the King with the consent of the Privy Council to commute a sentence of death to imprisonment for life.

34 Lord Chief Justice to forward report to Prime Minister[35]

The Lord Chief Justice so soon as conveniently may be after pronouncing any sentence of death shall forward to the King in Council his notes of evidence taken at the trial with a report in writing containing any recommendation or observations on the case which he may think fit to make.

35 Sentence of death: how executed[36]

Sentence of death shall be executed under the direction of the Minister of Police or of such other officer as the Cabinet may appoint, and the gaoler, a medical officer and such other officers of the prison as the Minister of Police or other officer appointed as aforesaid shall require, and such minister of religion as the Cabinet may at the request of the prisoner approve may be present at the execution.

36 Medical officer to supply certificate of death

As soon as may be after sentence of death has been executed on the offender the dead body shall be examined by a medical officer who shall ascertain the fact of death and shall sign a certificate thereof and deliver the same to the Minister of Police. The Minister of Police or other officer appointed under section 35 hereof

shall also sign a declaration to the effect that sentence of death has been executed on the offender.[37]

37 Inquest on body of person executed

(1) The Magistrate for the district in which the prison in which the sentence of death was carried out is situated shall within 24 hours after the execution hold an inquest on the body of the offender and the jury at the inquest shall inquire into and ascertain the identity of the body and whether sentence of death was duly executed on the offender.

(2) No officer of the prison or prisoner confined therein shall in any event be a juror on the inquest.

38 Cabinet to appoint place of burial for executed criminals[38]

The Cabinet shall by writing under its seal appoint some fit place for the burial of offenders executed and the body of every offender shall be buried in such place.

39 Regulations with respect to execution of death sentence[39]

The Cabinet may from time to time make such regulations to be observed on the execution of sentence of death as they may deem expedient for the purpose of guarding against any abuse in the execution, for giving greater solemnity thereto and for making known without the prison walls the fact that the execution is taking place.

40 Sentence of death not to be passed on pregnant woman

Where a woman convicted of an offence punishable with death is found in accordance with the provisions of this Act to be pregnant the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.[40]

41 Procedure where woman convicted of capital offence alleges she is pregnant

Where a woman convicted of an offence punishable with death alleges that she is pregnant or where the Court before whom a woman is so convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her be determined by a medical doctor.[41]

PART V - TRIAL OF OFFENCES AND ALTERNATIVE VERDICTS

42 Trial of offences

(1) Where a person is arraigned on an indictment —

(a) he shall in all cases be entitled to make a plea of not guilty in addition to any demurrer or special plea;

(b) he may plead not guilty of the offence specifically charged in the indictment but guilty of another offence of which he might be found guilty on that indictment;

(c) if he stands mute of malice or will not answer directly to the indictment, the Court may order a plea of not guilty to be entered on his behalf and he shall then be treated as having pleaded not guilty.

(2) On an indictment including a court for murder a person found not guilty of murder may be found guilty on that count —

(a) of manslaughter, or of causing grievous bodily harm with intent to do so, or of wounding with that intent;

(b) of an offence of which he may be found guilty under a written law specifically so providing; or

(c) of an attempt to commit murder, or of an attempt to commit any other offence of which he might be found guilty,

but he may not be found guilty of any offence not included above.[42]

(3) Where on a person's trial on indictment for any offence except treason or murder, he is found not guilty of the offence specifically charged in the indictment but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the Court of trial, he may be found guilty of that other offence or of an offence of which he could be found guilty on an indictment specifically charging that other offence.[43]

(4) For purposes of subsection (3) any allegation of an offence shall be taken as including an allegation of attempting to commit that offence.

(5) Where a person arraigned on an indictment pleads not guilty of an offence charged in the indictment but guilty of some other offence (whether an offence of which he might be found guilty on that charge or an offence separately charged), and he is convicted on that plea of guilty without trial for the offence of which he has pleaded not guilty, his conviction of the one offence shall be an acquittal of the other.

(6) Subsections (1) to (3) (inclusive) apply to an indictment containing more than one count as if each count were a separate indictment.[44]

PART VI - PROCEDURE AGAINST CORPORATIONS

43 Procedure on charge of offence against corporation

(1) Where a corporation is charged with an offence before a Magistrate's Court, the Court may commit the corporation for trial by an order in writing under the hand of the Magistrate empowering the prosecution to prefer a bill of indictment in respect of the offence named in the order.

(2) The form of order under subsection (1) shall be in the form as the Form in the Schedule.

(3) A representative may on behalf of a corporation —

(a) make a statement before the Magistrate in answer to the charge;

(b) consent or object to summary trial or claim trial by jury.

(4) Where a representative appears, any requirement of the Magistrate's Court Act that anything shall be done in the presence of the accused, or shall be read or said to the accused, shall be construed as a requirement that the thing shall be done in the presence of the representative or read or said to the representative.

(5) Where a representative does not appear, any such requirement, and any requirement that the consent of the accused shall be obtained for summary trial does not apply.

(6) Subject to this section, the provisions of the Magistrate's Court Act relating to the inquiry into and trial of indictable offences apply to a corporation as they apply to an adult.

(7) Where a corporation is charged jointly with an individual with an offence before a Magistrate's Court, then if the offence is not a summary offence but one that may be tried with the consent of the accused, the Court shall not try either of the accused summarily unless each of them consents to be so tried.

(8) Where a corporation is arraigned on an indictment before the Supreme Court, the corporation may enter in writing by its representative a plea of guilty or not guilty, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter as mentioned above any plea, the Court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.

(9) In this section the expression "representative" in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this section authorised to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any Court for any other purpose.

(10) A representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as *prima facie* evidence that person has been so appointed.[45]

PART VII - OFFENCES AGAINST THE STATE

44 Treason

Every person who —

(a) levies or conspires to levy war against the King or the Government;

(b) attempts to assassinate the King or the heir to the throne;

(c) attempts to depose the King;

(d) joins in a rebellion against the King; or

(e) incites any person to assassinate or depose the King or to assassinate the heir to the throne,

is guilty of treason and shall on conviction thereof be sentenced to death or to imprisonment for any period not exceeding life and his lands and other property shall be forfeit to the Crown.

45 Concealment of treason

Every person who being aware of any intended treason omits to give information thereof to the Minister of Police or to the Governor of the district or the Government representative for the district shall be liable to imprisonment for any period not exceeding 7 years.

46 Attempts to injure or alarm the King

Every person who with intent to injure or alarm the King wilfully —

(a) points at the King any description of firearm or weapon whatsoever;

(b) throws or attempts to throw anything at the King; or

(c) strikes or attempts to strike the King with any weapon or in any other manner whatever,

shall be liable to imprisonment for any period not exceeding 10 years.

47 Sedition

(1) Every person who speaks any seditious words or makes, publishes, imports or distributes any seditious document or is party to a seditious conspiracy shall be liable to imprisonment for any period not exceeding 14 years.[46]

(2) Seditious words are words expressive of a seditious intention.

A seditious document is a document expressive of a seditious intention.

A seditious conspiracy is an agreement between 2 or more persons to carry into execution a seditious intention.

48 Definition of seditious intention

A seditious intention is an intention to do any of the following matters —

(a) to excite disaffection against the King of Tonga or against the Government of Tonga, Legislative Assembly or Judiciary in Tonga;[47]

(b) to excite such hostility or ill-will between different classes of the inhabitants of the Kingdom as may be injurious to the public welfare;

(c) to incite, encourage or procure violence, disorder or resistance to law or lawlessness in the Kingdom;

(d) to procure otherwise than by lawful means the alteration of any matter affecting the Constitution, Laws or Government of the Kingdom;[48]

(e) to solicit a foreign Government or international organization or any person to —

(i) overthrow or destabilize the Government; or

(ii) destabilize or destroy the fundamental constitutional, economic or social structure of the Kingdom.[49]

49 Deprivation of civil rights

Any person who shall be sentenced to 2 years imprisonment or more for treason, concealment of treason or sedition shall be deprived of his rights as a citizen and shall not hold an appointment in the public service nor vote in any election for representatives to the Legislative Assembly nor serve on a jury unless pardoned by the King.

50 Acceptance of bribe by government servant

Every person employed as or acting in the capacity of a Government servant who shall demand or accept any money or valuable consideration of any description whatever as an inducement to do or abstain from doing any act in the execution of his duty as such Government servant or as an inducement for showing favour or

disfavour to any person shall be liable to imprisonment for any period not exceeding 3 years.

51 Bribery of government servant

Every person who shall give or offer any money or valuable consideration of any description whatever to any person in the service of the Government as an inducement to do or abstain from doing any act in the execution of his duty as a Government servant or as an inducement to show favour or disfavour to any person shall be liable to imprisonment for any period not exceeding 3 years.

52 Extortion by government servant

Every person employed as or acting in the capacity of a Government servant who from an improper motive and under colour of office demands or accepts from any other person any money or valuable consideration whatever which is not due from such person at the time when it is so demanded or accepted shall be liable to imprisonment for any period not exceeding 5 years.

53 Fraudulent conversion by government servant[50]

(1) Every person who being employed as or acting in the capacity of a Government servant fraudulently converts to his own use or to the use or benefit of any other person or in any manner fraudulently disposes of any money, valuable security or thing of any description whatever or any part thereof which has been entrusted to or received by him by virtue of his employment as a Government servant shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious fraudulent conversion by government servant or the offence of simple fraudulent conversion by government servant.

(3) The offence of serious fraudulent conversion by government servant —

(a) is punishable by a term of imprisonment for any period not exceeding 10 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple fraudulent conversion by government servant –.

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

54 False receipt: issue of, by government servant

Every Government servant who wilfully gives to any person a receipt for an amount of money or property different from the amount actually paid over or delivered to such Government servant shall be liable to imprisonment for any period not exceeding 3 years.[51]

55 Assaulting or obstructing government servants

Every person who assaults, resists or wilfully obstructs any Government servant in the lawful execution of his duty shall be liable on conviction to imprisonment for any period not exceeding 2 years, or to a fine not exceeding $5,000, or to both such fine and imprisonment.[52]

56 Intimidating government servants

Every person who, with a view to induce any Government servant to do or refrain from doing any act in the lawful execution of his duty, intimidates such Government servant or his wife or children or injures or threatens to injure his property shall be liable on conviction to imprisonment for any period not exceeding 2 years, or to a fine not exceeding $5,000, or to both such fine and imprisonment.[53]

57 Use of threatening, etc., language to government servant

Every person who uses threatening, abusive or insulting language or behaviour towards any officer in the service of the Government shall be liable on conviction to imprisonment for any period not exceeding 2 years, or to a fine not exceeding $5,000, or to both such fine and imprisonment.[54]

58 Refusal to assist in prevention of crime

Every person who being lawfully required by any public officer, police officer or other person to render assistance in preventing the commission of any offence or in arresting any person or in preventing the rescue or escape of any person, refuses or neglects to render such assistance shall be liable to a fine not exceeding $2,500 and in default of payment to imprisonment for any period not exceeding 6 months.[55]

59 Making counterfeit currency

(1) Every person who —

(a) makes any counterfeit currency resembling or apparently intended to resemble any of the current currency of the Kingdom of Tonga or of any foreign state or country; or

(b) has in his possession or makes any dies or other instruments or materials intended to be used in the making of counterfeit currency,

shall be liable to imprisonment for any period not exceeding 10 years.[56]

(2) Any counterfeit currency or any dies, instruments or material used in making any counterfeit currency found in the possession of any person may be seized and shall be delivered up to the Treasurer or to any person authorized by him for the purpose by order of the Court before which the offender is tried.[57]

60 Impairing current currency

Every person who shall impair or diminish any of the current currency of the Kingdom of Tonga or of any foreign state or country with intent that when so impaired or diminished it shall pass as current currency either in Tonga or elsewhere shall be liable to imprisonment for any period not exceeding 5 years.[58]

61 Uttering counterfeit currency

Every person who shall utter any currency resembling or apparently intended to resemble any of the current currency of the Kingdom of Tonga or of any foreign state or country, knowing such currency to be counterfeit, shall be liable to imprisonment for any period not exceeding 5 years.[59]

62 Importing, etc., counterfeit currency

Any person who imports or receives or obtains in any manner whatsoever any counterfeit currency knowing the same to be counterfeit with intent to utter the same shall be guilty of an offence against this Act and on conviction be liable to imprisonment for any term not exceeding 5 years.[60]

PART VIII - OFFENCES AGAINST JUSTICE, THE PUBLIC PEACE, AND PUBLIC MORALS

63 Perjury

(1) Perjury is the making by any person upon oath or affirmation, either in a judicial proceeding or in any affidavit or solemn declaration, of any material statement relating to a matter of fact, opinion, belief or knowledge which the person making such statement knows to be false.

(2) Every proceeding shall be deemed to be judicial within the meaning of subsection (1) which is held before any Court or before any person having power to take evidence on oath or affirmation.

(3) Every person who commits perjury or counsels or procures a person to commit any perjury which is actually committed shall be liable to imprisonment for any period not exceeding 7 years.

(4) Every person who attempts to induce another to commit perjury shall be liable to imprisonment for any period not exceeding 3 years.[61]

64 False statements

(1) Any person who knowingly and wilfully makes otherwise than on oath a statement false in a material particular and the statement is made —

(a) in an account, certificate, declaration, entry, inventory, notice or other document which he is authorized or required to make attest or verify by any written law;[62]

(b) in any oral declaration or oral answer which he is required to make under or in pursuance of any written law; or [63]

(c) in any written statement made to the police by such person as a witness to or in connection with any criminal offence alleged to have been committed by any other person, provided that he signed at the end of his written statement an acknowledgement that he was warned that if he knowingly and wilfully made therein any statement false in a material particular he became liable to prosecution,[64]

shall be guilty of an offence and on conviction thereof shall be liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding $5,000 or to both such fine and imprisonment.[65]

(2) No prosecution shall be instituted against any person for an offence under this section unless the same shall be commenced within 2 years from the time of the commission of such offence.[66]

65 Interference with course of justice

Every person who conspires or attempts to interfere wrongfully in any manner with the course of justice in any matter, civil or criminal, shall be liable to imprisonment for any period not exceeding 5 years.[67]

66 Bribing jurors

(1) Every person who shall offer any inducement of any description whatsoever to another for the purpose of influencing such other person's decision as a juror in any matter, civil or criminal, shall be liable to imprisonment for any period not exceeding 3 years.

(2) Every person who refrains or offers to refrain from prosecuting any offence in return for any valuable consideration, favour or reward received or to be received from any offender shall be liable to imprisonment for any period not exceeding 4 years.

67 Unlawful Society[68]

(1) A society includes any combination of 10 or more persons whether the society be known by any name or not.

(2) A society is an unlawful society —

(a) if the Cabinet by Order declares the society to be a threat or a danger to the peace, order and good government of the Kingdom; or

(b) if it aims at, or was formed for, or engages in, any one or more of the following —

(i) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of the Kingdom;

(ii) killing or injuring or inciting to the killing or injuring of any person;

(iii) destroying or injuring or inciting to the destruction or injuring of any property;

(iv) subverting or promoting the subversion of the Government or of its officials;

(v) committing or inciting to acts of violence or intimidation;

(vi) interfering with, or resisting, or inciting to interference with or resistance to the administration of the law; and

(vii) disturbing or inciting to the disturbance of peace or order in any part of the Kingdom.

68 Managing unlawful society

Any person who manages or assists in the management of an unlawful society commits an offence and is liable to imprisonment for 7 years.[69]

69 Being member of unlawful society

Any person who —

(a) is a member of an unlawful society; or

(b) knowingly allows a meeting of an unlawful society or of members of an unlawful society to be held in any house, building or place belonging to or occupied by him, or over which he has control,

commits an offence and is liable to imprisonment for 3 years.[70]

70 Prosecution under Sections 68 and 69

(1) A prosecution for an offence under sections 68 or 69 shall not be instituted except with the consent in writing of the Attorney General:

Provided that a person charged with such an offence may be arrested or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.[71]

(2) In any prosecution for an offence under sections 68 or 69 it shall not be necessary to prove that the society consisted of 10 or more members; but it shall be sufficient to prove the existence of a combination of persons and the onus shall then rest with the accused to prove that the number of members of such combination did not amount to 10.

(3) Any person who attends a meeting of an unlawful society shall be presumed, until and unless the contrary is proved, to be a member of that society.

(4) Any person who has in his possession or custody or under his control, any of the insignia, banners, arms, books, papers, documents or other property belonging to an unlawful society, or wears any of the insignia, or is marked with any mark of the society, shall be presumed, unless and until the contrary is proved, to be a member of the society.[72]

71 Power of entry, arrest search etc.

Any police officer may without warrant enter with or without assistance any house, buildings, tent, vessel, aircraft or into any place whatsoever in which he has reason to believe that a meeting of an unlawful society or of persons who are members of an unlawful society is being held, and to arrest or cause to be arrested all persons found therein, and to search such house, building, tent, vessel, aircraft or other place and seize or cause to be seized all insignia, banners, arms, books, papers, documents and other property which he may have reasonable cause to believe to belong to any unlawful society or to be in any way connected with the purpose of the meeting.[73]

72 Declaration by Cabinet[74]

When a society is declared to be an unlawful society by an order of the Cabinet, the following consequences shall ensue —

(a) the property of the society within the Kingdom shall forthwith vest in an officer appointed by the Prime Minister;

(b) the officer appointed by the Prime Minister shall proceed to wind up the affairs of the society and, after satisfying and providing for all debts and liabilities of the society and the cost of winding up, if there shall then be any surplus assets, such assets shall become the property of the Government and may be disposed of as the Prime Minister may direct.[75]

73 Forfeiture of insignia etc.

Subject to the provisions of section 72, insignia, banners, arms, books, papers, documents and other property belonging to an unlawful society shall be forfeited to the Government for disposal in such manner as the Prime Minister may direct.[76]

74 Unlawful assembly and Riot

(1) (a) When 3 or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, those 3 or more persons constitute an unlawful assembly.

(b) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

(2) When an unlawful assembly takes a step towards executing, or begins to execute, the purpose for which it assembled by committing a breach of the peace to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.[77]

75 Punishment for unlawful assembly

(1) Any person who takes part in an unlawful assembly commits an offence and is liable to imprisonment for a period not exceeding one year.

(2) Any person who takes part in a riot commits an offence and is liable to imprisonment for a period not exceeding 4 years.[78]

76 Making proclamation for rioters to disperse

(1) Any magistrate or, in his absence, any police officer not below the rank of sub-inspector or any officer in charge of a police station, in whose view 5 or more persons are riotously assembled, or who apprehends that a riot is about to be committed by 5 or more persons assembled within his view, may make or cause to be made a proclamation in the name of the King, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

Dispersion of rioters after proclamation

(2) If upon the expiration of a reasonable time after such proclamation has been made, or after the making of such proclamation has been prevented by force, 10 or more persons continue to riotously assemble together, any person

authorised to make a proclamation, or any police officer, or any person acting in aid of such person or police officer, may do all things necessary for dispersing the persons so assembled, or for apprehending them or any of them, and, if any person resists, may use all such force as is reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceedings for having, by the use of such force, caused harm or death to any person.

Rioting after proclamation

(3) If a proclamation is made commanding the persons engaged in a riot or assembled with the purpose of committing a riot to disperse, every person who, at or after the expiration of a reasonable time from the making of such proclamation, takes or continues to take part in the riot or assembly commits an offence and shall be liable to imprisonment for a period not exceeding 10 years.[79]

Preventing or obstructing the making of proclamation

(4) Any person who forcibly prevents or obstructs the making of the proclamation referred to in this section commits an offence and is liable to imprisonment for a period not exceeding 10 years; and if the making of the proclamation is so prevented or obstructed every person who, knowing that it has been so prevented, takes or continues to take part in the riot or assembly, is liable to imprisonment for a period not exceeding 15 years.[80]

77 Rioters demolishing buildings etc.

(1) All persons who, being riotously assembled together, unlawfully pull down or destroy or begin to pull down or destroy any building, machinery or structure commit an offence and are liable to imprisonment for a period not exceeding 15 years.[81]

(2) All persons who, being riotously assembled together, unlawfully damage any of the things mentioned in subsection (1) commit an offence and are liable to imprisonment for a period not exceeding 7 years.

(3) All persons who, being riotously assembled together, unlawfully and with force prevent, hinder or obstruct the loading or unloading of any vehicle, vessel or aircraft, or the starting of any vehicle or the sailing or navigation of any vessel or the departure or arrival of any aircraft, or unlawfully and with force board any vehicle, vessel or aircraft with intent to do any such act aforesaid commit an offence and are liable to imprisonment for a period not exceeding 5 years.[82]

78 Going armed in public

Any person who goes armed in public without lawful excuse in such manner as to cause terror to any person commits an offence and is liable to imprisonment for a period not exceeding 5 years and his arms shall be forfeited to the Government.[83]

78A *Repealed by Act 23 of 2013*

78B *Repealed by Act 23 of 2013*

78C *Repealed by Act 23 of 2013*

79 Bigamy

(1) Every person who —

(a) being lawfully married, goes through a form of marriage with any other person, or

(b) goes through a form of marriage with any person whom he or she knows to be married,

is guilty of bigamy and shall be liable to imprisonment for any period not exceeding 3 years.

(2) The fact that the parties would if unmarried have been incompetent for any reason to contract marriage shall not be a defence upon a prosecution for bigamy.

(3) It shall be a sufficient defence upon any prosecution for bigamy if it is proved —

(a) that at the time of the marriage in respect of which the charge is brought the defendant's husband or wife as the case may be had been continually absent from the defendant for 7 years or more and had not been known by the defendant to be alive at any time within that period; or

(b) that at the time of the marriage in respect of which the charge is brought the defendant honestly believed upon reasonable grounds that the husband or wife as the case may be was dead; or

(c) that at the time of the marriage in respect of which the charge is brought the defendant honestly believed upon reasonable grounds that the first marriage was invalid; or

(d) that the previous marriage had been dissolved by a decree of divorce or had been declared void from the beginning by any Court of competent jurisdiction.

Illustration

Subsection (2). On the prosecution of A for bigamy it will be no defence to prove that A's alleged bigamous marriage was to a person whom he was by law prohibited from marrying on the ground of consanguinity.

80 Keeping a brothel, etc.

(1) It is an offence for a person to keep a brothel, or to manage, or act or assist in the management of, a brothel.

(2) It is an offence for the lessor or landlord of any premises or his agent to let the whole or part of the premises with the knowledge that it is to be used in whole or in part as a brothel, or, where the whole or part of the premises is used as a brothel, to be wilfully a party to that use continuing.

(3) It is an offence for the tenant or occupier, or person in charge of any premises knowingly to permit the whole or part of the premises to be used as a brothel.

(4) It is an offence for the tenant or occupier of any premises knowingly to permit the whole or any part of the premises to be used for the purposes of habitual prostitution.

(5) A brothel is a house or room or place of any kind whatever kept, used or resorted to for purposes of prostitution.

(6) For purposes of this section premises shall be treated as a brothel if people resort to it for the purpose of lewd homosexual practices in circumstances in which resort thereto for lewd heterosexual practices would have led to its being treated as a brothel for the purpose of this section.

(7) Any person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for any period not exceeding one year.[84]

81 Trading in prostitution

(1) Every male person who knowingly lives wholly or in part on the earnings of prostitution shall be liable to imprisonment for any period not exceeding 2 years and in the case of a second or subsequent conviction the Court may in addition to any term of imprisonment awarded order him to be whipped in accordance with the law for the time being in force regulating the punishment of offenders by whipping.[85]

(2) For the purposes of subsection (1) a man who lives with or is habitually in the company of a prostitute, or who exercises control, direction or influence over a prostitute's movements in a way which shows he is aiding, abetting or compelling her prostitution with others, shall be presumed to be knowingly living on the earnings of prostitution, unless he proves the contrary.[86]

(3) Every woman who for purposes of gain exercises control, direction or influence over a prostitute's movements in a way which shows she is aiding, abetting or compelling her prostitution is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for any period not exceeding 2 years.[87]

(4) Any person who in any public place solicits or importunes for immoral purposes shall be liable to imprisonment for any period not exceeding 6 months.[88]

(5) Any male person who, whilst soliciting for an immoral purpose, in a public place with intent to deceive any other person as to his true sex, has on or about his person any article intended by him to represent that he is a female or in any other way impersonates or represents himself to be a female shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding $1,000 or to imprisonment for a period not exceeding one year or to both such imprisonment and such fine.[89]

(6) A police officer may arrest without a warrant a person found committing an offence under this section.[90]

82 Gaming houses

(1) Every person who keeps a gaming house shall be liable to imprisonment for any period not exceeding one year.

(2) A gaming house is a house, room or place of any kind whatever kept or used as a place of resort for gaming.

(3) "Gaming" means the playing of any game of mere chance for money or other stakes of any description whatever or the playing at any game of mixed chance and skill for excessive stakes or otherwise to the injury of public morals.

(4) Any person who acts as a person having the management or care of a gaming house shall be deemed to be a keeper thereof whether he is in fact a keeper thereof or not.

(5) The owner or occupier of any house, room or place who knowingly permits the same to be used as a gaming house shall be deemed to be a keeper thereof whether he is in fact a keeper thereof or not.

83 Games of mere chance

Every person who plays for money or other stakes of any description whatever at any game of mere chance shall be liable to a fine not exceeding $1,000 and in default of payment thereof to imprisonment for any period not exceeding 3 months.[91]

83A Licensed games[92]

Sections 82 and 83 do not apply to any game played pursuant to a licence obtained under any legislation.

84 Use of disguise

Any person who without lawful excuse is found in any place disguised by the blackening of his face by wearing a mask or by any other means whatsoever shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding $1,000 or imprisonment not exceeding one year or to both such imprisonment and such fine.[93]

PART IX - OFFENCES AGAINST THE PERSON

85 Definition of homicide

Homicide is the killing of a human being by any means whatsoever and is either culpable or not culpable.

86 Definition of culpable homicide

(1) Culpable homicide consists in the killing of any person either —

(a) by an unlawful act;

(b) by omission without lawful excuse to perform or observe towards such person any legal duty;

(c) by the commission of an unlawful act combined with the omission of a legal duty;

(d) by causing a person through threats or fear of violence or through deception to do an act which causes that person's death; or

(e) by wilfully frightening a child or sick person.

(2) Culpable homicide is either murder or manslaughter.

87 When culpable homicide amounts to murder

(1) Culpable homicide is murder in any of the following cases —

(a) if the offender intended to cause the death of the person killed;

(b) if the offender intended to cause to the person killed any bodily injury which the offender knew was likely to cause death and was reckless whether death ensued or not;

(c) if the offender intending to cause the death of one person or intending to inflict on one person bodily injury likely to cause death and being reckless whether death ensues or not kills a different person by accident or mistake although he does not mean to hurt the person killed; or

(d) if the offender for the purpose of accomplishing any unlawful object does an act which he knows or ought to have known to be likely to cause death and thereby kills any person even though he may not have desired to hurt any person in order to effect his object.

(2) Culpable homicide is also murder in each of the following cases whether the offender does or does not know that death is likely to ensue —

(a) if he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences mentioned in subsection (3) of this section or for the purpose of facilitating the flight of any person who has committed or attempted to commit any of such offences and death ensues from such injury;

(b) if he administers any stupefying or overpowering thing for either of the purposes mentioned in paragraph (a) of this subsection and death ensues from the effects thereof;

(c) if he by any means wilfully stops the breath of any person for either of the purposes mentioned in paragraph (a) of this subsection and death ensues from such stoppage of the breath.

(3) The following are the offences referred to in paragraph (a) of subsection (2) —

treason, escape or rescue from prison or lawful custody, resisting lawful apprehension, murder, rape, abduction, robbery, housebreaking, arson.

88 When culpable homicide is manslaughter only

A person who commits culpable homicide shall be deemed to be guilty of manslaughter and not of murder if any of the following matters are proved on his behalf; namely —

(a) that he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in section 89 hereof;

(b) that he was justified in causing some harm to the other person, and that in causing harm in excess of the harm he would have been justified in causing, he acted from such terror of death or grievous hurt as in fact deprived him for the time being of the power of self-control; or

(c) that in causing the death he acted in the belief in good faith and on reasonable grounds that he was under a legal duty to cause the death or to do the act which he did. [94]

89 What matters amount to extreme provocation

The following matters may amount to extreme provocation to one person to cause the death of another person namely —

(a) an unlawful assault committed upon the accused person by the other person which was of such a kind either by reason of its violence or of accompanying words, gestures or other circumstances of aggravation as to be likely to deprive any person of ordinary character being in the circumstances in which the accused person was, of the power of self-control;

(b) the taking up by the other person at the beginning of an unlawful fight of an attitude manifesting an intention of instantly attacking the accused person with deadly or dangerous means or in a deadly manner;

(c) an act of adultery committed in the view of the accused person with or by his wife or her husband or the crime of unnatural carnal knowledge committed in the view of the accused person upon his wife or his or her child;

(d) a violent assault committed in the view or presence of the accused person upon his or her wife, husband, child or parent or upon any other person in the presence of and in the care or charge of the accused person.

90 When extreme provocation will not avail

(1) Notwithstanding proof on behalf of the accused person of any such matter of extreme provocation as is mentioned in section 89 hereof, his crime shall not be deemed to be thereby reduced to manslaughter if it appears either from the evidence given on his behalf or on behalf of the prosecution —

(a) that he was not in fact deprived of the power of self-control by the provocation;

(b) that he acted wholly or partly from a previous purpose to cause death or harm or to engage in an unlawful fight whether or not he would have acted on that purpose at the time or in the manner in which he did act had it not been for the provocation;

(c) that after the provocation was given and before he did the act which caused the harm, such a time elapsed or such circumstances occurred that a person of ordinary character might have recovered his self-control; or

(d) that his act was in respect either of the instrument or means used or of the brutal manner in which it was used, greatly in excess of the measure in which a person of ordinary character would have been likely under the circumstances to be deprived of his self-control by the provocation.

(2) Where the accused person in the course of a fight made use of any deadly or dangerous means against an adversary who had not used or manifested any

intention of being about to use any such means against him, then if it appears that the accused person purposed or prepared to use such means before he had received any such blow or hurt in the fight as might be sufficient provocation to use means of that kind, he shall be presumed to have used the means from a previous purpose to cause death notwithstanding that before the actual use of the means he may have received any such blow or hurt in the fight as might amount to extreme provocation.

91 Penalty for murder

(1) Every person who commits murder shall be sentenced to death or to imprisonment for life:

Provided that sentence of death shall not be pronounced on or recorded against any person under the age of 15 years but in lieu of such punishment the Court shall sentence such person to be detained during His Majesty's pleasure and such person shall thereupon be liable to be detained in such place and under such conditions as the Cabinet may direct and whilst so detained shall be deemed to be in legal custody.[95]

(2) Every person who attempts to commit murder shall be liable to imprisonment for life or any less period.

92 Manslaughter

Culpable homicide which does not amount to murder is manslaughter and if such homicide was caused by negligence the offence is only manslaughter by negligence.

93 Penalties for manslaughter

Every person who commits manslaughter by negligence shall be liable to imprisonment for any period not exceeding 10 years and every person who commits manslaughter in any other way than by negligence shall be liable to imprisonment for any period not exceeding 25 years.[96]

94 Person charged with manslaughter may be convicted of dangerous driving

When a person is charged with manslaughter in connection with the driving of a motor vehicle by him and the Court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under section 25 of the Traffic Act, he may be convicted of that offence although he was not charged with it.[97]

95 Omissions to perform a legal duty

(1) Every person who undertakes whether by a legally binding contract or otherwise to do any act the omission of which is or may be dangerous to human life is under a legal duty to do that act and any death resulting from the non-performance of any such act shall be deemed to be a death caused by an omission to perform a legal duty within the meaning of section 86(1)(b).

(2) Every person having in any manner whatsoever the charge of any other person unable by reason of detention, youth, old age, sickness, insanity or any other cause to withdraw himself from such charge is under a legal duty to supply such other person with the necessaries of health and life and any death resulting from omission to do so shall be deemed to be a death caused by an omission to perform a legal duty within the meaning of section 86(1)(b).

(3) **"Necessaries of health and life"** includes proper food, clothing, shelter and medical or surgical treatment.

(4) Every person who —

(a) has in his possession or under his control anything whatever animate or inanimate which in the absence of precaution or care may endanger human life; or

(b) erects, makes or maintains anything whatever which in the absence of precaution or care may be dangerous to human life,

is under a legal duty to take reasonable precautions against and to use reasonable care to prevent such danger to life and any death caused by the omission to take such precaution or care shall be deemed to be a death caused by an omission to perform a legal duty within the meaning of section 86(1)(b).

*Illustration*s

Subsection (2). The parents or adoptive parents of a child; the gaoler in charge of a prisoner; the person in charge of a lunatic, are all alike under a legal duty to provide food and medical attendance for the child or person under their care. If death ensues from failure to do so, it is a death caused by omission to perform a legal duty, and if the failure to provide food or medical attendance was due to an intention to cause death or bodily injury it will be murder, but if otherwise the offence will be manslaughter by negligence only.

Subsection (4)(a). If a man for the purpose of unloading his gun discharges it in a place where people are likely to pass and kills somebody it is manslaughter by negligence, but if he knows that people are actually passing at the time, and discharges the gun with intent to do hurt and kills somebody it will be murder.

96 When death deemed to have been caused by an act or omission

A person's death shall be held to have been caused by an act or omission —

(a) if by reason of such act or omission the death of the person has happened otherwise or sooner by however short a time than it would have happened but for the act or omission;

(b) although the act or omission would not have caused the person's death but for his infancy, old age, disease, intoxication or other state of body or mind at the time of the occurrence of the act or omission;

(c) although the act or omission would not have caused the person's death but for his refusal or neglect to submit to or seek proper medical or surgical treatment or but for his negligent or improper conduct or manner of living; or

(d) although the person's death was caused by the medical or surgical treatment administered to him unless such treatment amounts to murder or manslaughter.

97 Indirect cause of death

Any person whose act or omission results in the death of another person shall be deemed to have caused his death notwithstanding the fact that the immediate cause of death was the act or omission of some third person or some other independent intervening event.

Illustration

A secretly drops some poison into the medicine of C, an invalid. C's nurse in ignorance of A's act gives C the medicine and C dies of the poison. A is guilty of causing C's death although the immediate cause of death was the nurse's administration of the medicine to C.

98 When child is a person in being

(1) In order that a child may be such a person that causing its death will amount to murder or manslaughter it is necessary that before its death the child should have been completely brought forth alive from the body of its mother and have had an independent circulation but not that it should have been detached from the mother by severance of the umbilical cord.

(2) It is murder or manslaughter as the case may be to cause death to happen to a child after it becomes a person within the meaning of this section by means of harm caused to it before it became such a person.

99 Infanticide

(1) Where a woman by any wilful act or omission causes the death of her child being a child under the age of 12 months but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child then notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder she shall be guilty of an offence to wit of infanticide and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.[98]

(2) Where upon the trial of a woman for the murder of her child being a child under the age of 12 months the Court is of opinion that she by any wilful act or omission caused its death but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child then the Court may notwithstanding that the circumstances were such that but for the provisions of this section it might have returned a verdict of murder return in lieu thereof a verdict of infanticide.[99]

(3) Nothing in this section shall affect the power of the Court upon a trial for the murder of a newly-born child to return a verdict of manslaughter or a verdict of guilty but insane or a verdict of concealment of birth in pursuance of section 102 of this Act except that for the purposes of the proviso to that section a child shall be deemed to have recently been born if it had been born within 12 months before its death.[100]

100 Suicide

Every person who attempts to commit suicide shall be liable to imprisonment for any period not exceeding 3 years.

101 Inciting to commit suicide

Every person shall be liable to imprisonment for life or any less period who —

(a) incites another person to commit suicide if such other person actually commits suicide in consequence thereof; or

(b) assists any person in committing suicide.

102 Concealment of birth

If any woman shall be delivered of a child, every person who shall by any secret disposition of the dead body of the said child whether such child died before at or after its birth endeavour to conceal the birth thereof shall be guilty of an offence and

being convicted thereof shall be liable at the discretion of the Court to be imprisoned for any term not exceeding 3 years:

Provided that if any person tried for the murder of any child shall be acquitted thereof, it shall be lawful for the Court by whose verdict such person shall be acquitted to find in case it shall so appear in evidence that the child had recently been born and that such person did by some secret disposition of the dead body of such child endeavour to conceal the birth thereof and thereupon the Court may pass such sentence as if such person had been convicted for the concealment of the birth.[101]

103 Procuring miscarriage of woman or girl

Every person who with intent to procure the miscarriage of any woman or girl —

(a) administers to or causes to be taken by her any drug or other noxious thing; or

(b) unlawfully uses any instrument or other means whatever,

shall be liable to imprisonment for any period not exceeding 7 years.

104 Woman or girl procuring her own miscarriage

Every woman or girl who whether with child or not administers to herself or permits to be administered to her any drug or other noxious thing or uses on herself or permits to be unlawfully used on her any instrument or other means whatsoever with intent to procure miscarriage shall be liable to imprisonment for any period not exceeding 3 years.

105 Supplying means of miscarriage

Every person who supplies or procures any drug or other noxious thing or any instrument knowing that the same is to be unlawfully used for the purpose of procuring miscarriage of any woman or girl shall be liable to imprisonment for any period not exceeding 4 years.

106 Grievous bodily harm

(1) Every person who wilfully and without lawful justification causes grievous harm to any person in any manner or by any means whatsoever shall be liable to imprisonment for any period not exceeding 10 years.

(2) "**Grievous harm**" means —

(a) any harm endangering life;

(b) the destruction or permanent disabling of any external or internal organ, member or sense;

(c) any severe wound;

(d) any grave permanent disfigurement; or

(e) the transmitting to another person, by any means, of the Human Immunodeficiency Virus (HIV).[102]

107 Bodily harm[103]

(1) Every person who wilfully and without lawful justification causes harm to any person in any manner or by any means whatsoever shall be guilty of an offence under this section.

(2) "**Harm**" for the purposes of this section means —

(a) any injury which seriously or permanently injures health or is likely so to injure health; or

(b) any injury involving serious damage to any external or internal organ, member or sense short of permanent disablement; or

(c) any wound which is not severe; or

(d) any permanent disfigurement which is not of a serious nature.

(3) An offence under this section may be the offence of serious causing bodily harm or the offence of simple causing bodily harm.

(4) The offence of serious causing bodily harm —

(a) is punishable by a term of imprisonment for any period not exceeding 5 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(5) The offence of simple causing bodily harm —

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

108 Attempt to intimidate[104]

(1) Every person who with intent to intimidate or annoy any person —

(a) breaks or injures in any manner whatsoever or threatens to break or injure any dwelling-house, or

(b) alarms or attempts to alarm any person in any dwelling-house by the discharge of firearms,

shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious intimidation or the offence of simple intimidation.

(3) The offence of serious intimidation —

(a) is punishable by a term of imprisonment for any period not exceeding 5 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple intimidation —

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

109 Discharging firearm with intent to intimidate, etc.

Every person who with intent to intimidate or annoy discharges a firearm near any other person or presents a loaded firearm at a person or persons within range shall be liable to imprisonment not exceeding 5 years.[105]

110 Exploding dynamite, etc., with intent to intimidate, etc.

Every person who explodes dynamite or other substance anywhere with intent to intimidate or annoy any other person shall be liable to imprisonment not exceeding 5 years.[106]

111 Threatening documents[107]

(1) Every person who with knowledge of its contents sends or causes to be received any document containing any threat to kill or containing any threat to kill or do bodily harm to any person or to damage any property shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious sending threatening documents or the offence of simple sending threatening documents.

(3) The offence of serious sending threatening documents —

(a) is punishable by a term of imprisonment for any period not exceeding 5 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple sending threatening documents —

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

112 Common assault

Every person who wilfully and without lawful justification —

(a) strikes at or actually hits another person with his hand or with anything held therein;

(b) seizes or tears the clothes of another person;

(c) pushes, kicks or butts another person;

(d) spits or throws liquid or any substance on or at another person;

(e) sets a dog on another person;

(f) applies or attempts to apply force to another person directly or indirectly; or

(g) threatens by any act or gesture to apply force to another person if the person making the threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose,

is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for any period not exceeding one year or to both.[108]

113 Assault, obstruction

Every person who —

(a) assaults any person with intent to commit an offence, or to resist or prevent the lawful apprehension or detention of himself or of any other person, or to rescue any person from lawful custody;

(b) assaults, obstructs or resists any police officer acting in the execution of his duty or any person in aid of that officer; or

(c) assaults, obstructs or resists any person acting in the lawful execution of any process against any property or with intent to rescue any movable property taken under that process or under any lawful distress,

is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for any period not exceeding one year or to both.[109]

114 Unlawful imprisonment

Every person who shall unlawfully imprison or detain another person shall be liable to a fine not exceeding $5,000 and in default of payment thereof to imprisonment for any period not exceeding one year.[110]

115 Cruelty to children and young persons

(1) If any person over the age of 16 years, who has the custody, charge, or care of any child or young person, wilfully assaults, ill-treats, neglects, abandons, or exposes such child or young person, or causes or procures such child or young

person to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment for any term not exceeding 3 years; and for the purpose of this section a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails to provide adequate food, clothing, medical aid, or lodging for the child or young person.[111]

(2) A person may be convicted of an offence under this section, notwithstanding that actual suffering or injury to health, or the likelihood of such suffering or injury to health, was obviated by the action of another person.

(3) A person may be convicted of an offence under this section, notwithstanding the death of the child or young person in respect of whom the offence is committed.

(4) Upon the trial of any person over the age of 16 for the manslaughter of a child or young person of whom he had the custody, charge or care, it shall be lawful for the Court, if it is satisfied that the accused is guilty of an offence under this section in respect of such child or young person, to find the accused guilty of such offence.[112]

(5) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruable or payable in the event of the death of the child or young person, and had knowledge that such sum of money was accruing or becoming payable, then the Court may in its discretion either increase the amount of the fine under this section so that the fine does not exceed $20,000 or, in *lieu* of awarding any other penalty under this section, sentence the person to imprisonment for any term not exceeding 5 years.[113]

(6) A person shall be deemed to be directly or indirectly interested in a sum of money under this section, if he has any share in or any benefit from the payment of that money, though he is not a person to whom it is legally payable.

(7) A copy of a policy of insurance, certified by an officer or agent of the insurance company granting the policy, to be a true copy, shall in any proceedings under this section be *prima facie* evidence that the child or young person therein stated to be insured has been in fact so insured, and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

(8) For the purposes of this section —

(a) the expression "child" means a person under the age of 14 years;

(b) the expression "young person" means a person who is 14 years of age or upwards and under the age of 16 years.[114]

115A Child pornography[115]

(1) Any person who, wilfully in any manner —

(a) publishes child pornography;

(b) produces child pornography for any purpose; or

(c) possesses child pornography,

commits an offence punishable, upon conviction —

(i) in the case of an individual, by a fine not exceeding $100,000 or imprisonment for a period not exceeding 10 years; or

(ii) in the case of a corporation by a fine not exceeding $250,000.

(2) It is a defence to a charge of an offence under subsections (1)(a) or (1)(c) if the person establishes that the child pornography was a *bona fide* scientific, research, medical or law enforcement purpose.

(3) For the purposes of this section —

(a) the expression "child pornography" includes material that visually depicts —

(i) a child engaged in sexually explicit conduct;

(ii) a person who appears to be a child engaged in sexually explicit conduct; or

(iii) images representing a child engaged in sexually explicit conduct;

(b) the expression "child" means a person under the age of 14 years;

(c) the expression "publish" includes to —

(i) distribute, transmit, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell or offer for sale, let on hire or offer to let on hire, offer in any other way, or make available in any way;

(ii) have in possession or custody, or under control, for the purpose of doing an act referred to in subsection (1); or

(iii) print, photograph, copy or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing an act referred to in subsection (1).

116 Enticing or taking away children[116]

(1) Every person who with intent to deprive any parent or other person having the lawful charge of any child under the age of 14 years of the possession of such child unlawfully —

(a) takes or entices away or detains such child, or

(b) receives such child knowing it to have been so taken or enticed away as aforesaid,

shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious enticement of a child or the offence of simple enticement of a child.

(3) The offence of serious enticement of a child —

(a) is punishable by a term of imprisonment for any period not exceeding 5 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple enticement of a child —

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

(5) Nothing in subsection (1) contained shall render liable to prosecution on account of getting possession of any such child as is mentioned therein any person claiming in good faith a right to the possession of such child nor any person being the mother of an illegitimate child.

117 Enticing woman to desert husband

Every person who entices any married women to desert her husband shall be liable to a fine not exceeding $500 and in default of payment thereof to imprisonment for any period not exceeding 12 months.[117]

118 Rape[118]

(1) Any person committing rape that is to say any person who carnally knows any female —

(a) against her will;

(b) being aware that she is in a state of insensibility (whether due to sleep, intoxication or any other cause);

(c) being aware that she is feeble minded, insane or is an idiot or imbecile as to be incapable of giving or refusing consent;[119]

(d) by personating her husband; or

(e) by reason of her consent to such carnal knowledge having been given under fear of death or serious injury,

shall be liable to imprisonment for any term not exceeding 15 years.

(2) For purposes of subsection (1) a man commits rape if at the time of sexual intercourse with a woman he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it.[120]

(3) It is hereby declared that if at a trial for a rape offence the Court has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter for which the Court is to have regard in conjunction with any other relevant matters in considering whether he so believes.[121]

(4) A prosecution may be instituted against a woman as an aider and abetter in respect of an offence under subsection (1).[122]

119 Order restricting publication[123]

(1) Where an accused is charged with an offence mentioned in section 118, the presiding Judge or Magistrate may, or if application therefor is made by the complainant or the Prosecutor, shall, make an order directing that the identity of the complainant and her evidence taken in the proceedings shall not be published in the Kingdom in a written publication available to the public or be broadcast in the Kingdom.

(2) The presiding Judge or Magistrate shall, at the first reasonable opportunity, advise the complainant of her right to make an application for an order under subsection (1).

120 Attempted rape

Any person who attempts to carnally know any female under any of the circumstances enumerated in clauses (a) to (e) of section 118 shall be liable to imprisonment for any term not exceeding 10 years.

121 Carnal knowledge of child or young person[124]

(1) Any person who carnally knows any child under the age of 12 years shall be liable on conviction thereof to imprisonment for any period not exceeding life.

(2) Any person who carnally knows any young person under the age of 15 years shall be liable on conviction thereof to imprisonment for 5 years.

122 Attempt to have carnal knowledge of a child or young person[125]

(1) Any person who attempts to have carnal knowledge of a child under the age of 12 years shall be liable on conviction thereof to imprisonment for any term not exceeding 10 years.

(2) Any person who attempts to have carnal knowledge of a young person under the age of 15 years shall be liable on conviction thereof to imprisonment for any term not exceeding 3 years.

123 Consent and belief as to age no defence[126]

It shall be no defence to any charge under section 121 or 122 to prove that the child or young person consented to the act or with respect to section 121(1) and 122(1) that the person reasonably believed that the child was of or above the age of 12 years.

124 Indecent assault[127]

(1) Any person who shall commit an indecent assault on any person shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious indecent assault or the offence of simple indecent assault.

(3) The offence of serious indecent assault —

(a) is punishable by a term of imprisonment for any period not exceeding 5 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple indecent assault —

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

(5) A young person under the age of 15 years cannot in law give any consent which would prevent an act being an indecent assault for the purposes of this section.

(6) A person who is feeble minded, insane or an idiot or imbecile cannot in law give any consent which would prevent an act being an indecent assault for the purposes of this section, but a person is only to be treated as guilty of an indecent assault on such woman by reason of that incapacity to consent, if that person knew or had reason to suspect her to be feeble minded, insane or an idiot or imbecile.

125 Indecent assault on child

(1) Any person who shall commit an indecent assault on any child under the age of 12 years shall be liable on conviction thereof to imprisonment for any term not exceeding 7 years.[128]

Consent no defence

(2) It shall be no defence to any prosecution for an indecent assault on a child under the age of 12 years to prove that he or she consented to the act of indecency.

126 Procuring the defilement of females

Any person who —

(a) procures or attempts to procure any girl or any woman under 21 years of age to have unlawful carnal connection either within or without the Kingdom with any person or persons;[129] or

(b) procures or attempts to procure any woman or girl to leave her usual place of abode in the Kingdom with intent that she may become an inmate of or frequent a brothel within or without the Kingdom,

shall be liable to imprisonment for any term not exceeding 5 years:

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only unless such witness be corroborated in some material particular by evidence implicating the accused.

127 Procuring defilement of females by threats, etc.

Any person who —

(a) by threats or intimidation;

(b) by false pretences of fact; or

(c) by means of the application or administration of any drug or other substance to any woman or girl,

procures or attempts to procure any woman or girl to have any unlawful carnal connection with any person or persons whether within or without the Kingdom shall be liable to imprisonment for any term not exceeding 7 years:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only unless such witness be corroborated in some material particular by evidence implicating the accused.[130]

128 Abduction of women

Any person who shall by force take away or detain any woman of any age with intent to marry or carnally know her or to cause her to be married or carnally known by any other person shall on conviction thereof be liable to imprisonment for any term not exceeding 7 years.

129 Abduction of girls

(1) Any person who shall take or cause to be taken any girl being under the age of 14 years out of the possession, and against the will, of her father or mother or any other person having the lawful charge of her, shall be liable on conviction thereof to imprisonment for any term not exceeding 5 years.

(2) It shall be no defence to any prosecution brought under this section to prove that the girl consented to being so taken or that the accused was told or reasonably believed the girl to be of or above the age of 14 years.

130 Juvenile offender may be whipped

In the case of any male person convicted of an offence against any of the provisions of sections 118 to 129 (both inclusive) of this Act the Court, if the age of such offender does not exceed 16 years, may instead of sentencing him to imprisonment order him to be whipped in accordance with the law for the time being in force regulating the punishment of offenders by whipping.[131]

131 Offender charged with rape may be convicted of indecent assault, etc.

If upon the trial of any person for rape or for unlawfully carnally knowing a girl under the age of 12 years, the Court shall be satisfied that the defendant is guilty of an offence under either section 124, 125 or 127, but is not satisfied that the defendant is guilty of the offence charged against him or of an attempt to commit the same, the Court may acquit the defendant of the offence charged and may find him guilty of the offence under either section 124, 125 or 127, as the case may be, and the defendant shall be liable to the same punishment as if he had been originally charged and convicted of an offence against such section.[132]

132 Incest by male person

(1) Any male person who has carnal knowledge of a female person who is to his knowledge his granddaughter, daughter, sister, mother, aunt, mother's sister's daughter, father's sister's daughter, father's brother's daughter, or niece shall be liable to imprisonment for any term not exceeding 10 years.[133]

(2) It is immaterial that the carnal intercourse was held with the consent of the female person.

(3) If any male person attempts to commit any such offence as aforesaid he shall be liable to imprisonment for any term not exceeding 7 years.

(4) On a person's conviction of an offence under this section against a girl under the age of 21 or of attempting to commit such offence, the Court may by order divest him of all authority over her.[134]

(5) An order divesting a person of authority over a girl under subsection (4) may, if he is her guardian, remove him from the guardianship.[135]

(6) An order under this section may appoint a person to be the girl's guardian during her minority or any less period.[136]

(7) An order under this section may be varied from time to time or be rescinded by the Supreme Court.[137]

133 Incest by female person

Any female person of or above the age of 18 years who consents to her grandfather, father, brother, son, uncle, father's mother's son, mother's brother's son, mother's sister's son, father's brother's son or nephew having carnal knowledge of her (knowing him to be her grandfather, father, brother, son, uncle, father's mother's son, mother's brother's son, mother's sister's son, father's brother's son or nephew, as the case may be) shall be liable to imprisonment for any term not exceeding 10 years.[138]

134 Definition of relationship

In sections 132 and 133 the expressions "brother", "sister", "nephew" and "niece" shall respectively include half-brother, half-sister, half-nephew and half-niece.

135 On charge of incest accused may be convicted of rape, etc.[139]

(1) If on the trial of any person for any offence against section 132 the Court is satisfied that the defendant is not guilty of that offence but is guilty of the offence of rape or attempted rape, the Court shall acquit the defendant of that offence and find him guilty of rape or attempted rape and he shall be liable to be punished accordingly.

(2) If on the trial of any person for rape or attempted rape, the Court is satisfied that the defendant is guilty of an offence against section 132 but is not satisfied that the defendant is guilty of rape or attempted rape, the Court shall acquit the defendant of the charge of rape or attempted rape and find him guilty of an offence against section 132 and he shall be liable to be punished accordingly.

136 Sodomy and bestiality

Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the Court to be imprisoned for any period not exceeding 10 years.[140]

137 Assault with intent to commit sodomy[141]

It is an offence for a person to assault another person with intent to commit sodomy and a person found guilty of such offence shall be liable at the discretion of the Court to be imprisoned for any period not exceeding seven years.

138 *Repealed by Act 19 of 2012*

139 *Repealed by Act 19 of 2012*

140 Evidence

On the trial of any person upon a charge of sodomy or carnal knowledge it shall not be necessary to prove the actual emission of seed but the offence shall be deemed complete on proof of penetration only.

141 Proceedings *in camera*

All proceedings under sections 116 to 134 (both inclusive) whether in the Magistrate's Court or in the Supreme Court may be held *in camera*.

142 Whipping for certain offences

Whenever any male person shall be convicted of any offence against sections 106, 107, 115, 118, 121, 122, 125, 132 and 136 of this Act the Court may, in its discretion in *lieu* of or in addition to any sentence of imprisonment authorised under this Act order the person so convicted to be whipped in accordance with the provisions of section 31 of this Act.[142]

PART X - OFFENCES AGAINST PROPERTY

143 Definition of theft

Theft is the dishonest taking without any colour of right of anything (which by section 144 is declared capable of being stolen) with intent either —

(a) to deprive the owner permanently of such thing; or

(b) to deprive any other person permanently of any lawful interest possessed by him in such thing,

and with the intention of converting such thing to the use of any other person without the consent of the owner or person possessing such interest therein as aforesaid; "theft" and "steal" shall be construed accordingly.[143]

Explanations

If the article which the defendant is charged with stealing was taken by him either by mistake or in the honest belief that he had a right to it or with the full intention of returning it to its owner the defendant cannot be convicted of theft.

If the thing alleged to have been stolen was not moved by the defendant in the slightest degree from its place the offence does not amount to theft. Thus if A while opening a box to steal money contained in it and before moving any money from its place in the box becomes aware that he is being watched and desists and runs away he cannot be convicted of theft but may be convicted of attempted theft. If however A had taken some of the money out of the box and put it beside him on the floor he could be convicted of theft of that amount.

144 Things capable of being stolen

(1) Every animate thing which is the property of any person is capable of being stolen.

(2) Every inanimate thing which is the property of any person is capable of being stolen:

Provided that —

(a) it is moveable; or

(b) it is capable of being made moveable and has been made moveable even though it has been made moveable only in order to steal it.

Explanations

A horse, dog or fowl is capable of being stolen by reason of subsection (1).

Money, a boat or coconuts lying on the ground are capable of being stolen by reason of subsection (2)(a). Coconuts growing on a tree, yams growing in the ground are capable of being stolen under subsection (2)(b) as soon as the coconuts are detached from the tree or the yams are dug up even though the detaching or digging was done by the thief in order to steal them.

(3) Money and all other property, real or personal, including things in action and other intangible property is capable of being stolen. [144]

145 Punishment for theft[145]

Every person who commits theft is liable —

(a) if the value of the thing stolen does not exceed $10,000, to imprisonment for any period not exceeding 3 years;

(b) if the value of the thing stolen exceeds $10,000, to imprisonment for any period not exceeding 7 years.

146 Whipping upon conviction in certain cases

Whenever upon the conviction of any male person for theft or for any offence against sections 154, 155 and 173, the Court may, in its discretion, in addition to any sentence of imprisonment authorised under this Act, order the person so convicted to be whipped in accordance with the provisions of section 31 hereof.[146]

147 Taking things according to Tongan custom

Every Tongan who following the former Tongan custom takes anything capable of being stolen belonging to any of his relatives without the permission of its owner and with intent to deprive such owner permanently of such thing shall be liable to the same punishment as if he had committed theft.

148 Receiving

(1) Any person who receives any property knowing or believing it to have been stolen or obtained in any way whatsoever under circumstances which amount to a criminal offence is guilty of an offence and is liable to the same punishment as if he had committed theft.[147]

(2) Any person who receives any mail bag or any postal packet or any chattel or money or valuable security, the stealing or taking or embezzling or secreting whereof amounts to an offence under the postal laws or this Act, knowing or believing the same to have been unlawfully stolen, taken, embezzled or secreted, and to have been sent or to have been intended to be sent by post, is guilty of an offence and is liable to the same punishment as if he had committed theft.

(3) Any person mentioned in subsection (1) may be indicted and convicted whether the principal offender has or has not been previously convicted, or is not amenable to justice.

(4) Any person who, without lawful excuse, knowing or believing the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed in the Kingdom the person committing it would have been guilty of an offence, receives or has in his possession any property so stolen or obtained outside the Kingdom is guilty of an offence and is liable to the same punishment as if he had committed theft.

(5) For the purposes of this section and of any other written law relating to receivers or receiving, a person shall be treated as receiving property if he dishonestly undertakes or assists in its retention, removal, disposal or realisation, or if he arranges to do so.[148]

149 Summons charging theft may also contain charge of receiving

It shall be lawful to insert in any summons charging theft a charge of receiving the stolen property or any part thereof knowing or believing the same to have been stolen and it shall be lawful for the Court by whom such charges are tried to adjudge the defendant guilty either of stealing the property or of receiving the same or any part thereof knowing or believing it to have been stolen.[149]

150 Person may be charged with other acts of theft against same person

In the case of any person intended to be tried in the Supreme Court for theft, unless there are special reasons, no order shall be made preventing the trial at the same time of any number of such offences not exceeding 5, whether alleged to have been committed within 6 months from the first to the last of such offences against the same person or not. Nothing in this section shall prevent an indictment containing more than 5 counts from being presented.[150]

151 Finding of lost property: duty of finder

(1) Every person who takes possession of anything which appears to be of some value and to have been lost by another person, shall within 24 hours after taking possession of it deliver it to the owner if he be known and where the owner is unknown the thing so found shall be delivered to the district officer or town officer of the town in which the finder is residing or to the police. Any person failing to obey the provisions of this subsection shall be liable to imprisonment for any period not exceeding 3 months.[151]

Duty of District Officer

(2) Every District Officer upon delivery to him of any article which has been found shall cause the finding thereof to be proclaimed and if upon such proclamation being made the owner is not discovered the District Officer shall notify the police of the finding. If the owner is discovered within one month from the date of such notification to the police the District Officer shall deliver the thing found to him upon his paying the finder one-tenth of its apparent value. If the police fail to discover the owner within one month after receiving such notification as aforesaid the District Officer shall re-deliver the thing found to the finder and it shall become his absolute property.[152]

(3) Nothing in this section shall exempt a person from liability to punishment for stealing or receiving property knowing or believing it to have been stolen if his action amounts to either of such offences.[153]

152 Explanation as to stealing of thing found

A person who takes possession of a thing which appears to have been lost by another person is not guilty of stealing unless —

(a) at the time of taking possession he knows who is the owner of the thing or by whom it has been lost;

(b) the character or situation of the thing or any marks on it or any other circumstances is or are such as to afford some indication as to who is the owner of the thing or the person by whom it was lost; or

(c) it appears that the thing was not in fact lost but merely mislaid by being left by mistake in some place to which the owner would naturally return for it.

Illustrations

A finds in the street a pocket book containing treasury notes, the owner's name being inscribed on the pocket book. A will be guilty of theft if he appropriates the pocket book or the treasury notes.

A after purchasing goods in B's shop leaves his purse by mistake on the counter and goes away. B will be guilty of theft if he appropriates the purse.

153 Possession of stolen property

(1) It shall be lawful for any member of the police force to stop and detain any person he may meet carrying any article or articles for the purpose of ascertaining who the person is and the nature of the articles in his possession, and in case such police officer suspects that the articles have been improperly come by and the person in possession thereof fails to give a satisfactory account of himself and of how such articles were come by, such person may be conveyed to the police station and interrogated by the officer-in-charge.

(2) It shall be lawful for such officer-in-charge as aforesaid to cause a summons to be issued in the Magistrate's Court against such person charging him with having in his possession or conveying in any manner anything which is reasonably suspected of being stolen or unlawfully obtained and, if such person fails to give an account to the satisfaction of the Magistrate as to how he came by the same, he shall be liable to imprisonment for any period not exceeding 3 months.

(3) Where any person so charged as aforesaid declares to the Court that he received the articles in respect of which the charge is brought from some other person, or that he was employed as an agent or servant, or to convey the same for some other person, the Magistrate shall if practicable cause to be brought before him every such other person and if necessary any other person through whose possession such articles have passed, and shall examine witnesses on oath in regard thereto, and if it appears to the Magistrate that any person so brought before him has had possession of such articles and had reasonable cause to believe the same to have been stolen or unlawfully obtained, every such person shall be liable to imprisonment for any period not exceeding 3 months.

154 Robbery

(1) Robbery is the taking of anything capable of being stolen by using violence or threats of injury to the owner or person in lawful possession of the thing taken or to any property of his so as to put him in fear and thereby overcome his opposition to the taking.

(2) Every person who commits robbery shall be liable to imprisonment for any period not exceeding 10 years.

(3) Every person who commits a robbery under subsection (1) whilst being armed with an offensive weapon commits armed robbery and shall upon conviction be liable to imprisonment for any period not exceeding 20 years.[154]

155 Assault with intent to rob[155]

(1) Every person who shall assault any person with intent to commit robbery shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious assault with intent to rob or the offence of simple assault with intent to rob.

(3) The offence of serious assault with intent to rob —

(a) is punishable by a term of imprisonment for any period not exceeding 10 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple assault with intent to rob –.

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

156 Extortion

Every person who —

(a) with intent to extort or gain anything from any person accuses, threatens to accuse, or threatens to cause to be accused of a criminal offence the person to whom such accusation or threat is made or any other person; or

(b) knowing that a document contains such an accusation or threat as is mentioned in paragraph (a), causes such document to be received by any person,

shall be liable to imprisonment for any period not exceeding 10 years.[156]

157 Demanding property with menaces[157]

(1) Every person who with menaces demands from any person either for himself or for any other person anything capable of being stolen, with intent to steal it, shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious demanding property with menaces or the offence of simple demanding property with menaces.

(3) The offence of serious demanding property with menaces —

(a) is punishable by a term of imprisonment for any period not exceeding 10 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple demanding property with menaces —

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

158 Embezzlement

Every person employed as or acting in the capacity of a clerk or servant who shall fraudulently convert to his own use or benefit or to the use or benefit of any other person any money, valuable security or property of any description whatever or any part thereof which was delivered to or received by him on behalf of his master or employer shall be liable to imprisonment for any period not exceeding 7 years:

Provided that this section shall not apply to persons in the public service of the Kingdom.

159 Falsification of accounts

Every person employed as or acting in the capacity of a clerk, officer or servant and whether in the service of the Government or of a private employer who wilfully and with intent to defraud —

(a) destroys, alters or falsifies any book, valuable security, account or document which belongs to his employer;

(b) makes or concurs in making any false entry in any such book or document; or

(c) omits or alters or concurs in omitting or altering any material particular in any such book or document,

shall be liable to imprisonment for any period not exceeding 7 years.

160 Person may be charged with other acts of embezzlement, etc.

In the case of any person intended to be tried in the Supreme Court for embezzlement, falsification of accounts or fraudulent conversion respectively, unless there are special reasons, no order shall be made preventing the trial at the same time of any number of such offences not exceeding 5, whether alleged to have been committed within 6 months from the first to the last of such offences against the same person or not. Nothing in this section shall prevent an indictment containing more than 5 counts from being presented.[158]

161 Person charged with embezzlement or fraudulent conversion may be convicted of theft and *vice versa*.

Where on the trial in the Supreme Court of any person charged with embezzlement or fraudulent conversion, it appears from the evidence that the offence committed by such person in reference to the property in respect of which the prosecution has been brought was theft, or where on the trial in the Supreme Court of any person charged with theft it appears that the offence committed in regard to the property mentioned in the summons was that of embezzlement or fraudulent conversion, the defendant shall not in either instance be entitled to be acquitted, but in the former case the Court may return as their verdict that the defendant is not guilty of embezzlement or fraudulent conversion of property but is guilty of theft, and in the latter case that the defendant is not guilty of theft but is guilty of embezzlement or fraudulent conversion as the case may be; and thereupon the defendant shall in either case be liable to the same punishment as if he had been prosecuted and convicted for committing the offence of which the Court has found him guilty.[159]

162 Fraudulent conversion of property[160]

(1) Every person who —

(a) having had delivered to him anything capable of being stolen on loan or on hire or in order that he may do any work upon such thing; or

(b) being entrusted with anything capable of being stolen in order that he may retain the same in safe custody or apply, pay or deliver for any purpose or to any person such thing or any part thereof or any proceeds thereof; or

(c) having received for or on account of any other person anything capable of being stolen,

fraudulently converts to his own use or benefit or to the use or benefit of any other person such thing or any part thereof or any proceeds thereof, shall be guilty of an offence under this section

(2) An offence under this section may be the offence of serious fraudulent conversion or the offence of simple fraudulent conversion.

(3) The offence of serious fraudulent conversion —

(a) is punishable by a term of imprisonment for any period not exceeding 10 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple fraudulent conversion –.

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

163 Fraudulent conversion by trustee

Every person who as a trustee, executor, administrator, co-owner or member of a partnership has or acquires a lawful interest in any money, goods, valuable security or other thing capable of being stolen, and fraudulently converts such money, goods, security or other thing or any part thereof or proceeds thereof to his own use or benefit or to the use or benefit of any person not beneficially entitled thereto, shall be liable to imprisonment for any period not exceeding 7 years.

164 Obtaining by false pretences

Every person who by any false pretence obtains for himself or for any other person any money, valuable security or other thing whatever shall be liable to the same punishment as if he had committed theft.

165 Obtaining execution of security

Every person who by any false pretence causes or induces any person to execute, make, accept, endorse or destroy the whole or any part of any valuable security shall be liable to imprisonment for any period not exceeding 4 years.

166 Obtaining credit by false pretences

Every person who in incurring any debt or liability obtains credit by means of any false pretence or any fraud shall be liable to imprisonment for any period not exceeding 3 years.[161]

167 Obtaining goods by unauthorised use of employer's name

Every person who being employed as agent for another person obtains any goods on credit by using his employer's name without such employer's consent shall be liable to imprisonment for any period not exceeding 5 years.

168 Obtaining goods on relative's account

Every person who obtains any goods on credit by having them charged to the account of a relative without such relative's consent shall be liable to imprisonment for any period not exceeding 5 years.[162]

169 False pretences as to documents

Every person who procures the execution of any document by any person pretending that the contents thereof are different from what they really are shall be liable to imprisonment for any period not exceeding 5 years.

170 Forgery

(1) Forgery is —

(a) the making of any false document with intent to defraud or deceive any person whether ascertained or unascertained; or

(b) the affixing of an official seal to any document without being duly authorised.[163]

(2) Making of a false document includes —

(a) the making of any material alteration in a genuine document whether by erasure, obliteration or otherwise;

(b) the making of any material addition to a genuine document whether by adding a false date, attestation, seal or other matter that is material.

(3) A false document is —

(a) a document the whole or some material part of which purports to be made by or on behalf of any person who did not either make or authorize the making thereof or which, though in fact made by or by the authority of the person by whom it purports to be made, has its place or date of making falsely stated where either is material;

(b) a document the whole or some material part of which purports to be made by or on behalf of some person who never in fact existed; or

(c) a document made in the name of an existing person either by that person or by his authority with the intention that the document shall pass as being made by some person real or fictitious other than the person who makes or authorizes it.

(4) Forgery is complete if the false document is so made and is such as to show that it was intended to be acted on as genuine even though it may be incomplete or may not purport to be such a document as would be valid in law.

171 Punishment for forgery

Every person who commits forgery shall be liable to imprisonment for any period not exceeding 7 years.

171A Offences relating to official seals[164]

(1) Every person who without being duly authorised —

(a) makes or causes any official seal to be made; or

(b) is in possession of any official seal,

shall be liable to imprisonment for a period not exceeding 5 years.

(2) Where any person is found in unauthorised possession of any official seal, such seal may be seized and shall after the trial of the offender be delivered to the Chief Secretary and Secretary to Cabinet or such other person as the Court may direct.

171B Official seal, certificates[165]

(1) In any trial for an offence against section 170(1)(b) or 171A of this Act a certificate by —

(a) the Chief Secretary and Secretary to Cabinet; or

(b) a diplomatic or consular agent of a foreign Government,

as the case may be, that the person named therein was not authorised to use, make, cause to be made or be in possession of the official seal therein described shall be *prima facie* evidence of those facts.

(2) No certificate referred to in subsection (1) may be received in evidence unless a copy thereof has been served on the accused or his lawyer not less than 7 clear days before the certificate is tendered in evidence.

172 Knowingly dealing with forged documents

Every person who knowing a document to be forged uses, deals with or acts upon it or attempts to use deal with or act upon it or causes or attempts to cause any person to use, deal with or act upon it as if it were genuine shall be liable to imprisonment for any period not exceeding 5 years and it is immaterial whether such document was forged in Tonga or elsewhere.

173 House-breaking[166]

(1) A person is guilty of an offence under this section if —

(a) he enters any building or part of a building as a trespasser and with intent to commit any crime; or

(b) having entered any building or part of a building as a trespasser he committed or attempted to commit any crime in the building or that part of it.

(2) Reference in subsection (1) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

(3) For the purposes of this section the word "enters" in subsection (1) means the putting of any part of the body of the person making the entrance, or any part of any instrument used by him, inside the building.

(4) An offence under this section may be the offence of serious housebreaking or the offence of simple housebreaking.

(5) The offence of serious housebreaking —

(a) is punishable by a term of imprisonment for any period not exceeding 10 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(6) The offence of simple housebreaking –.

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

174 Unlawful entry into buildings by night[167]

(1) Every person who enters or is found by night in any dwelling house, shop or other building of any kind whatsoever without lawful justification shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious unlawful entry by night or the offence of simple unlawful entry by night.

(3) The offence of serious unlawful entry by night —

(a) is punishable by a term of imprisonment for any period not exceeding 5 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple unlawful entry by night –.

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

175 Unlawfully being on enclosed premises at night

(1) Every person who is found by night in any town in an enclosed yard, garden or other enclosed area without lawful justification for his presence there shall be liable to imprisonment for any period not exceeding 2 years.

(2) It shall be lawful for any police officer to arrest without warrant any person whom he finds committing an offence against this section.

176 Possession of house-breaking instruments[168]

(1) Every person who is found by day or night armed with any offensive instrument with intent to break and enter any building whatsoever shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious possession of house-breaking instruments or the offence of simple possession of house-breaking instruments.

(3) The offence of serious possession of house-breaking instruments —

(a) is punishable by a term of imprisonment for any period not exceeding 5 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple possession of house-breaking instruments —

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

177 Arson[169]

(1) A person is guilty of an offence if he wilfully and without lawful justification sets fire to any building of any kind belonging to another person or to any vessel, crop, property or other thing whatsoever belonging to another person whether attached to the soil or not.

(2) An offence under this section may be the offence of serious arson or the offence of simple arson.

(3) The offence of serious arson —

(a) is punishable by a term of imprisonment for any period not exceeding 7 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple arson —

(a) is punishable by a term of imprisonment for any period not exceeding 3 years;

(b) shall be heard and determined by the Magistrate's Court.

(5) Where the person accused has an interest in the thing to which he sets fire, the existence of such interest if partial shall not prevent his act from amounting to an offence of arson, nor shall the existence of such interest if total prevent his act from amounting to arson if such act was done with intent to defraud.

(6) Every person who commits the offence of serious arson knowing or being reckless that human life is endangered thereby shall upon conviction be liable to imprisonment for any period not exceeding 15 years.

PART XI - WILFUL DAMAGE TO PROPERTY AND ANIMALS: TRESPASS: BURNING OFF UNDERGROWTH, ETC.

178 Wilful damage to buildings, vessels, wharves, etc.[170]

(1) Every person who in any manner intentionally and unlawfully causes damage to any building or vessel or to any wharf or to any machinery or tools or to any building, structure, machinery, apparatus or vessel constructed or used for the purposes of any harbour or wharf or for the purpose of regulating the action of the sea or protecting any land from erosion or inundation by the sea, or to any lighthouse, light beacon, buoy or other apparatus whatsoever which is used or maintained for the safety of navigation shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious wilful damage to buildings or the offence of simple wilful damage to buildings.

(3) The offence of serious wilful damage to buildings —

(a) is punishable by a term of imprisonment for any period not exceeding 10 years;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple wilful damage to buildings —

(a) is punishable by a term of imprisonment for any period not exceeding 6 months;

(b) shall be heard and determined by the Magistrate's Court.

179 *Repealed by Act 19 of 2012*

180 Interference with landmarks

Every person who shall move, damage or in any manner interfere with any landmark or any Government survey peg which has been fixed under the authority of a Government surveyor or of the Minister of Lands shall be liable to imprisonment for any period not exceeding one year.

181 Wilful damage to commodities[171]

Every person who intentionally and unlawfully causes damage in any manner whatsoever to anything in course of manufacture or preparation for sale or to anything manufactured or prepared for sale or to any kind of vegetable produce whatsoever, whether growing or severed from the soil, and whether in any building yard or stack or wheresoever situated is guilty of an offence and —

(a) if the damage caused does not exceed $5,000, is liable on summary conviction to imprisonment for any period not exceeding 2 years; or

(b) if the damage caused exceeds $5,000 is liable on conviction on indictment to imprisonment for any period not exceeding 5 years.

182 Killing or maiming cattle

Every person who intentionally and unlawfully kills, maims or wounds any cattle shall be liable to imprisonment for any period not exceeding 3 years.

183 Killing or maiming other animals

Every person who intentionally and unlawfully kills, maims or wounds any animal not being cattle, which is of some value and which is and appears tamed or domesticated or which is ordinarily kept in a state of confinement, shall be liable in respect of a first offence to imprisonment for any period not exceeding 6 months and for any subsequent offence to imprisonment for any period not exceeding one year.

184 Wilful damage to trees or cultivated plants, etc.

(1) Every person who intentionally and unlawfully causes damage to any tree or cultivated plant growing in any public place or Government plantation or in any private plantation, garden, pleasure ground or cemetery shall —

(a) where the amount of such damage does not exceed $5,000 be liable to imprisonment for any period not exceeding 2 months; and

(b) where the amount of such damage exceeds $5,000 be liable to imprisonment for any period not exceeding 2 years.[172]

(2) Every person who intentionally and unlawfully causes damage to any tree or cultivated plant growing elsewhere shall be liable to imprisonment for any period not exceeding 6 weeks.

185 Wilful damage to fish fences

Every person who intentionally and unlawfully damages, destroys or takes away any fish fence, net, fish pot or other apparatus of any other person erected or placed for the purpose of catching, taking or keeping turtle or fish or any turtle or fish in any fish fence, net, fish pot or other apparatus so erected or placed as aforesaid shall be liable to a fine not exceeding $2,000 and in default of payment to imprisonment for any period not exceeding 3 months.[173]

186 Wilful damage to fences

Every person who intentionally and unlawfully destroys or damages any part of any live or dead fence whatsoever or any post, pale, rail or wire used as a fence or any gate or part thereof respectively shall be liable to a fine not exceeding $2,000 and in default of payment to imprisonment for any period not exceeding 3 months.[174]

187 Wilful damage to things not otherwise provided for[175]

(1) Every person who shall intentionally and unlawfully cause damage to any land, animal or thing not specially provided for in this Act shall be guilty of an offence under this section.

(2) An offence under this section may be the offence of serious wilful damage or the offence of simple wilful damage.

(3) The offence of serious wilful damage —

(a) is punishable by a fine of $20,000 or a term of imprisonment for any period not exceeding 7 years or to both such fine and such imprisonment;

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.

(4) The offence of simple wilful damage —

(a) is punishable by a fine of $5,000 or a term of imprisonment for any period not exceeding 2 years or to both such fine and such imprisonment;

(b) shall be heard and determined by the Magistrate's Court.

188 Trespass

(1) Every person who without lawful excuse enters upon the tax allotment, plantation, garden or other land belonging to or in the possession of another person shall be liable at the prosecution of such owner or occupier to a fine not exceeding $1,000 of which half shall be paid to such owner or occupier and the other half to the Government.[176]

(2) If any damage to crops or land has been caused by such entry the Magistrate may in addition to any fine inflicted under this section order the defendant to pay compensation in respect of such damage up to an amount not exceeding $4,000 which sum in the case of injury to private property shall be paid to the owner or occupier and in case of injury to Government property shall be paid to the Government. If such fine and compensation together with the costs of summons shall not be paid within the period specified by the Magistrate at the time of conviction the Magistrate may commit the defendant to prison for any period not exceeding 4 months unless such amounts be sooner paid.[177]

(3) Where a person is prosecuted and convicted under subsection (1) for the second time, he shall be liable to a fine not exceeding $2,000, and where the same person is prosecuted and convicted under subsection (1) for a third time he shall be liable to a fine not exceeding $5,000, and if such fine shall not be paid within the period specified by the Magistrate at the time of conviction, the Magistrate shall commit the defendant for any period not exceeding 1 month.[178]

(4) Where a person is prosecuted and convicted under subsection (2) for the second time, he shall be liable to a fine not exceeding $10,000, and if such fine shall not be paid within the period specified by the Magistrate at the time of conviction, the Magistrate shall commit the defendant for any period not exceeding 6 months, and where the same person is prosecuted and convicted under subsection (2) for a third time, the Magistrate at the time of conviction shall commit the defendant to prison for any period not exceeding 1 year.[179]

189 Taking and using cattle without owner's consent

Every person who catches, takes or drives or attempts to catch or drive any cattle from or out of any tax or town allotment, yard or stable or from any place where it is lawfully tethered for the purpose of riding it or using it for carrying anything or for drawing any vehicle or for the purpose of setting it loose or for any other unlawful or mischievous purpose without the consent of the owner or person in charge thereof and without having any claim of title thereto shall be liable to a fine not exceeding $2,000 and in default of payment to imprisonment for any period not exceeding 3 months.[180]

190 Burning things in towns without proper precaution

Every person who in any town burns any building, shed or other thing of which he is the owner, without taking proper precaution to prevent damage from fire to any adjacent property belonging to another person or persons, shall be liable to imprisonment for any period not exceeding one year.

191 Burning off undergrowth; notice to be given and proper precautions taken

(1) Every person who intends to set fire to or cause fire to be set to any tree, bush, underwood, rubbish, hana or other grass shall give notice to all neighbours possessing or in charge of any tax allotment, plantation, trees, crops or buildings which might be damaged or destroyed by the fire if carelessly or improperly used, and shall also take proper precautions to prevent any damage or destruction to such allotment, plantation, trees, crops or buildings of his neighbours.

Penalty - Compensation for damage

(2) Whoever sets fire to or causes fire to be set to any tree, bush, underwood, rubbish, hana or other grass for any purpose without notice given and proper precautions taken as in this section provided shall, whether or not any damage or injury is caused to any other person's tax allotment, plantation, trees, crops or buildings, be liable on conviction therefor before a Magistrate at the instance of the police or the person aggrieved to a fine not exceeding $2,500 and where any such damage or injury as aforesaid has been caused shall in addition to any fine imposed under this section be ordered to pay compensation in respect of such damage up to an amount not exceeding $5,000 which sum in the case of injury to private property shall be paid to the person aggrieved and in the case of injury to Government property shall be paid to the Treasury in aid of the general revenue of the Kingdom. If such fine and compensation together with the costs of summons shall not be paid within such period as the Magistrate at the time of conviction shall appoint, the Magistrate may commit the defendant to prison for any period not exceeding one year unless such amounts be sooner paid.[181]

PART XII - RESTITUTION OF STOLEN PROPERTY AND APPROPRIATION OF MONEY TAKEN FROM PRISONER ON ARREST

192 Restitution of property criminally obtained

Whenever any person is convicted of stealing or obtaining by any other criminal means any property, the Court may order that such property or any part thereof

found in his possession or in the possession of any other person for him shall be delivered to the person who from the evidence appears to the Court to be entitled thereto.

193 Restitution where stolen property pawned by thief

When any person is convicted of stealing or otherwise criminally obtaining any property and it appears to the Court that such property or any part thereof has been pawned with any person, the Court may order its delivery to the person who appears to the Court to be the owner either without payment or on payment by him to the person with whom the same was pawned of the amount of the loan or such part thereof as the Court under all the circumstances of the case may deem just.

194 Money taken from prisoner to be applied as compensation

If upon the arrest of any person charged with an offence any money is found upon him and taken charge of by the police then in case of his conviction the Court may in its discretion order such money or any part thereof to be applied to the payment of any compensation which the Court directs to be paid by the offender.

195 Money taken from prisoner to be paid to innocent purchaser of stolen property

Whenever upon the conviction of any person for stealing or otherwise criminally obtaining any property it appears to the Court from the evidence in the case that the defendant has sold the property forming the subject matter of the charge or any part thereof to another person who was unaware that the defendant had procured such property by criminal means, and it further appears to the Court that any money has been taken by the police from the defendant on his arrest, it shall be lawful for the Court to order that the person to whom such property or part thereof was sold shall restore the property to its rightful owner and shall be paid out of any such money as aforesaid taken from the defendant a sum not exceeding that which he paid to the defendant in respect of such property or part thereof.

PART XIII - PROSECUTIONS AND PROCEDURE THEREON

196 In what courts prosecutions may be brought[182]

(1) Prosecutions for offences against this Act or any other Act shall be heard and determined as follows —

(a) offences within the jurisdiction of a Magistrate as defined in the Magistrates' Courts Act: In a Magistrate's Court;

(b) all other offences: In the Supreme Court with or without a jury according to the accused's election.

(2) If a person may be charged with alternate offences under the sections set out in subsection (3) or under any other Act, the choice of which offence shall be charged and prosecuted shall be decided by the Attorney General: Provided that the Attorney General may delegate to the Solicitor General or to the Police Prosecutors the authority to make that decision in such cases or classes of cases as he may specify.

(3) The alternative offence sections in this Act, referred to in subsection (2) are —

Section 53 – fraudulent conversion by government servant;

Section 107 – causing bodily harm;

Section 108 – intimidation;

Section 111 – sending threatening documents;

Section 116 – enticing children;

Section 122 – attempted carnal knowledge of girl under 16;

Section 124 – indecent assault;

Section 155 – assault with intent to rob;

Section 157 – demanding property with menaces;

Section 162 – fraudulent conversion;

Section 173 – housebreaking;

Section 174 – unlawful entry by night;

Section 176 – possession of house-breaking instruments;

Section 177 – arson;

Section 178 – wilful damage to buildings etc;

Section 187 – wilful damage.

197 Who may prosecute

All prosecutions under this Act may be brought by the Attorney General or the person aggrieved.[183]

PART XIV - PROBATION OF OFFENDERS

198 Recognizance of good behaviour[184]

(1) Where any person has been convicted of any offence and the Court is of opinion having regard to the character, antecedents, age, health or mental condition of the person charged or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, it is expedient to release the offender on probation, the Court may make an order discharging the offender conditionally on his entering into a recognizance with or without sureties to be of good behaviour and to appear for sentence when called upon at any time during such period not exceeding 3 years as may be specified in the order.

(2) An Order under this section and including a probation order may be made either in addition to or in substitution for any other punishment.

199 Court may place convicted offender on probation

A recognizance ordered to be entered into under section 198 shall if the Court so order contain a condition that the offender be under the supervision of such person as may be named in the order during the period specified in the order and such other conditions as to residence, abstention from alcoholic liquors and for securing such supervision as may be specified in the order and such order is referred to in this Act as a probation order.

200 Probation order to be in writing

The Court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe.

201 Release on adjournment[185]

(1) In any case where the Court —

(a) is satisfied that a person is guilty of an offence;

(b) is of opinion having regard to the character, antecedents, age, health or mental condition of the person charged or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, that it should make an order under this section,

the Court may, instead of convicting the person adjourn the proceedings for a period of up to 3 years and release the offender upon the offender giving an undertaking to comply with the conditions applying under subsection (2), and any further conditions imposed by the court.

(2) An undertaking under subsection (1) shall have conditions that—

(a) that the offender shall appear before the court if called on to do so during the period of the adjournment, and if the court so specifies, at the time to which the further hearing is adjourned;

(b) that the offender is of good behaviour during the period of the adjournment; and

(c) that the offender observes any special conditions imposed by the court.

(4) A court may make an order for restitution or compensation in addition to making an order under this section.

(5) An offender who has given an undertaking under subsection (1) may be called upon to appear before the court —

(a) by order of the court;

(b) by notice issued by a court officer on the authority of the court.

(6) If at the time to which the further hearing of a proceeding is adjourned the court is satisfied that the offender has observed the conditions of the undertaking, it shall discharge the offender without any further hearing of the proceeding.

202 Variation of order for release on adjournment[186]

(1) A court which has made an order for the release of an offender on an adjournment under this Part may vary the order or cancel it and deal with the offender for the offence or offences with respect to which it was made if it is satisfied that —

(a) circumstances have arisen which make it impossible for the offender to comply with the conditions; or

(b) the circumstances of the offender were wrongly stated or not accurately presented to the court before the order was made; or

(c) the offender is no longer willing to comply with the conditions of the undertaking.

(2) In dealing with an offender under subsection (1) the court must take account of the extent to which the offender had complied with the conditions of the undertaking.

(3) An application to the court to exercise its powers under subsection (1) may be made by—

(a) the offender; or

(b) the Attorney General.

(4) A court may order that a warrant of arrest be issued against an offender who does not attend before the court on the hearing of an application under this section.

203 Breach of order for release on adjournment[187]

(1) An offender who fails to comply with a condition applying to an undertaking given under this Part during the period in which the undertaking is in force is guilty of an offence.

(2) Upon charging an offender with an offence under subsection (1) a warrant to arrest the offender may be issued.

(3) If on the hearing of a charge under subsection (1) the court finds the offender guilty of an offence under subsection (1) it may—

(a) vary the original order;

(b) confirm the original order; or

(c) deal with the offender for the offence or offences with respect to which the original order was made, which may involve the substitution of the original order with a new sentence for the original offence.

204 Discharge without conviction[188]

(1) Where a court is of the opinion, having regard to the circumstances including the nature of the offence and character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, it may make an order discharging him absolutely or alternatively discharging him subject to the condition that he commits no offence during such period, not exceeding 3 years from the date of the order, as may be specified therein.

(2) A discharge under this section is deemed to be an acquittal.

(3) A court discharging an offender under this section may —

(a) make an order for payment of costs or the restitution of any property; or

(b) make any order for the payment of any sum that the court thinks fair and reasonable to compensate any person who, through, or by means of, the offence, has suffered —

(i) loss of, or damage to, property;

(ii) emotional harm; or

(iii) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.

SCHEDULE

FORM

(Section 43)

ORDER COMMITTING CORPORATION FOR TRIAL CRIMINAL OFFENCES ACT

Magistrate's Court, District of .....

Date:.....

Accused corporation: .....

Registered office: .....

Alleged offence:.....

.....

.....

(short particulars and Act)

The accused corporation was today charged before the above Court with the above offence and the Court having inquired into the offence and determined to commit the accused corporation for trial at the Supreme Court at .....

Order:

You, ... (name), as prosecutor are hereby empowered to prefer a bill of indictment in respect of the offence at the Supreme Court.

.....
Magistrate for the above mentioned District
(Signature and Seal)

ENDNOTES

[1] **1988 Revised Edition, Chapter 18** - Acts Nos. 10 of 1924, 11 of 1924, 21 of 1926, 7 of 1929, 5 of 1930, 5 of 1931, 6 of 1935, 15 of 1935, 16 of 1935, 12 of 1936, 7 of 1939, 4 of 1942, 11 of 1942, 24 of 1942, 13 of 1943, 7 of 1944, 4 of 1948, 5 of 1948, 5 of 1949, 23 of 1950, 6 of 1952, 6 of 1954, 9 of 1956, 12 of 1957, 13 of 1957, 9 of 1958, 13 of 1958, 14 of 1958, 9 of 1959, 7 of 1962, 16 of 1962, 20 of 1966, 8 of 1967, 13 of 1969, 8 of 1975, 13 of 1978, 19 of 1978, 26 of 1978, 6 of 1980, 8 of 1984, 26 of 1984, 9 of 1987, 46 of 1988;

Amendments after 1988

Amending Acts	Commencement
Act 25 of 1990	19 December 1990
Act 8 of 1991	15 August 1991
Act 19 of 1991	4 February 1992
Act 12 of 1995	10 October 1995
Act 24 of 1997	22 September 1997
Act 17 of 1999	3 November 1999
Act 28 of 1999	17 November 1999
Act 4 of 2000	4 August 2000
Act 17 of 2001	13 September 2001
Act 24 of 2002	4 March 2004
Act 6 of 2003	21 August 2003
Act 16 of 2004	24 March 2005
Act 18 of 2005	10 January 2006
Act 5 of 2006	3 January 2007
Act 19 of 2012	27 December 2012
Act 23 of 2013	11 November 2013
Act 14 of 2015	4 December 2015

[2] Added by Act 5 of 1930

[3] Substituted by Act 13 of 1943

[4] Inserted by Act 19 of 1991

[5] Added by Act 15 of 1935, Amended by Act 9 of 1958

[6] Substituted by Act 6 of 1980 and Amended by Acts 9 of 1987 and 46 of 1988

[7] Inserted by Act 9 of 1987 and Amended by Act 46 of 1988

[8] Amended by Act 13 of 1978

[9] Amended by Acts 13 of 1978 and 17 of 2001

[10] Amended by Act 42 of 2010

[11] Substituted by Act 15 of 1935

[12] Subsection substituted by Act 25 of 1990

[13] Inserted by Act 19 of 1978 and Amended by Act 9 of 1987

[14] Amended by Act 4 of 2000

[15] Inserted by Act 9 of 1987 and Amended by Act 4 of 2000

[16] Inserted by Act 17 of 1999

[17] Inserted by Act 4 of 2000

[18] Amended by Acts 7 of 1962, 13 of 1978 and 19 of 2012

[19] Amended by Acts 9 of 1987, 46 of 1988 and 19 of 2012

[20] Inserted by Act 25 of 1990 and amended by Act 19 of 2012

[21] Amended by Act 19 of 2012

[22] Amended by Act 19 of 2012

[23] Amended by Act 19 of 2012

[24] Amended by Act 19 of 2012

[25] Inserted by Act 19 of 2012

[26] Amended by Act 19 of 2012

[27] Substituted by Act 9 of 1987

[28] Substituted by Act 19 of 2012

[29] Amended by Act 9 of 1987

[30] Substituted by Act 13 of 1978 and Amended by Act 26 of 1984

[31] Amended by Act 9 of 1987

[32] Amended by Act 9 of 1987

[33] Amended by Act 8 of 1984

[34] Added by Act 4 of 1942, Amended by Acts 5 of 1948 and 9 of 1987

[35] Amended by Acts 42 of 2010 and 46 of 2010

[36] Amended by Act 42 of 2010

[37] Amended by Act 9 of 1958

[38] Amended by Act 42 of 2010

[39] Amended by Act 42 of 2010

[40] Added by Act 16 of 1939

[41] Substituted by Act 17 of 2001

[42] Amended by Act 17 of 2001

[43] Amended by Act 17 of 2001

[44] Inserted by Act 9 of 1987

[45] Inserted by Act 9 of 1987

[46] Amended by Acts 5 of 2006

[47] Amended by Act 17 of 1999

[48] Amended by Act 13 of 1978

[49] Inserted by Act 5 of 2006

[50] Substituted by Act 19 of 2012

[51] Amended by Act 19 of 2012

[52] Amended by Acts 23 of 1950, 20 of 1966, 9 of 1987,

[53] Amended by Acts 23 of 1950, 20 of 1966, 9 of 1987, 25 of 1990 and 19 of 2012

[54] Amended by Acts 23 of 1950, 20 of 1966, 9 of 1987, 25 of 1990 and 19 of 2012

[55] Amended by Acts 9 of 1987 and 19 of 2012

[56] Amended by Acts 5 of 1930, 16 of 1962, 13 of 1978 and 25 of 1990

[57] Added by Act 12 of 1936

[58] Amended by Acts 5 of 1930, 16 of 1962 and 9 of 1987

[59] Amended by Acts 5 of 1930, 16 of 1962 and 13 of 1978

[60] Added by Act 5 of 1930

[61] Amended by Act 25 of 1990

[62] Amended by Act 9 of 1987

[63] Amended by Act 9 of 1987

[64] Inserted by Act 26 of 1978

[65] Amended by Acts 9 of 1987 and 19 of 2012

[66] Added by Act 7 of 1929

[67] Amended by Act 25 of 1990

[68] Inserted by Act 8 of 1967; Amended by Act 42 of 2010

[69] Inserted by Act 8 of 1967

[70] Inserted by Act 8 of 1967

[71] Amended by Act 19 of 2012

[72] Inserted by Act 8 of 1967

[73] Inserted by Act 8 of 1967

[74] Amended by Act 42 of 2010

[75] Inserted by Act 8 of 1967

[76] Inserted by Act 8 of 1967

[77] Inserted by Act 8 of 1967

[78] Inserted by Act 8 of 1967, Amended by Act 25 of 1990

[79] Amended by Act 25 of 1990

[80] Inserted by Act 8 of 1967

[81] Amended by Act 25 of 1990

[82] Inserted by Act 8 of 1967

[83] Inserted by Act 8 of 1967

[84] Substituted by Act 9 of 1987, Amended by Acts 46 of 1988 and 19 of 2012

[85] Amended by Act 9 of 1987

[86] Inserted by Act 9 of 1987

[87] Inserted by Act 9 of 1987, Amended by Acts 46 of 1988

[88] Added by Act 11 of 1942

[89] Inserted by Act 19 of 1978

[90] Inserted by Act 9 of 1987

[91] Amended by Acts 25 of 1990 and 19 of 2012

[92] Inserted by Act 28 of 1999

[93] Added by Act 6 of 1952 and amended by Act 19 of 2012

[94] Amended by Act 13 of 1978

[95] Amended by Act 42 of 2010

[96] Amended by Act 17 of 1999

[97] Act 5 of 1949, Amended by Act 13 of 1958

[98] Amended by Act 9 of 1987

[99] Amended by Act 17 of 2001

[100] Added by Act 7 of 1939 and Amended by Act 17 of 2001

[101] Substituted by Act 15 of 1935 and Amended by Act 17 of 2001

[102] Amended by Act 24 of 1997

[103] Substituted by Act 19 of 2012

[104] Substituted by Act 19 of 2012

[105] Added by Act 7 of 1962 and Amended by Act 12 of 1995

[106] Added by Act 7 of 1962

[107] Substituted by Act 19 of 2012

[108] Inserted by Act 9 of 1987 and Amended by Acts 46 of 1988, 12 of 1995 and 19 of 2012

[109] Inserted by Act 9 of 1987 and Amended by Acts 46 of 1988 and 19 of 2012

[110] Amended by Act 9 of 1987 and Amended by Acts 46 of 1988 and 19 of 2012

[111] Amended by Acts 9 of 1987 and 19 of 2012

[112] Amended by Act 17 of 2001

[113] Amended by Acts 9 of 1987 and 19 of 2012

[114] Added by Act 12 of 1957

[115] Inserted by Act 6 of 2003
[116] Substituted by Act 19 of 2012
[117] Amended by Act 9 of 1987
[118] Amended by Act 17 of 1999
[119] Substituted by Act 9 of 1987
[120] Inserted by Act 9 of 1987
[121] Inserted by Act 9 of 1987 and Amended by Act 17 of 2001
[122] Inserted by Act 9 of 1987
[123] Inserted by Act 9 of 1987
[124] Substituted by Act 19 of 2012
[125] Substituted by Act 19 of 2012
[126] Substituted by Act 19 of 2012
[127] Substituted by Act 19 of 2012
[128] Amended by Act 25 of 1990
[129] Amended by Act 9 of 1987
[130] Amended by Act 25 of 1990
[131] Amended by Act 9 of 1987
[132] Amended by Act 17 of 2001
[133] Amended by Act 15 of 1935
[134] Inserted by Act 9 of 1987
[135] Inserted by Act 9 of 1987
[136] Inserted by Act 9 of 1987
[137] Inserted by Act 9 of 1987
[138] Amended by Acts 15 of 1935, 9 of 1987 and 24 of 1997
[139] Amended by Act 17 of 2001
[140] Substituted by Act 9 of 1987 and Amended by Act 25 of 1990
[141] Substituted by Act 19 of 2012
[142] Substituted by Act 9 of 1987
[143] Amended by Act 9 of 1987
[144] Inserted by Act 14 of 2015
[145] Substituted by Act 7 of 2009
[146] Substituted by Act 9 of 1987
[147] Amended by Act 46 of 1988
[148] Substituted by Act 9 of 1987
[149] Amended by Act 13 of 1978

[150] Amended by Act 24 of 1997

[151] Amended by Act 9 of 1958

[152] Amended by Act 9 of 1987

[153] Amended by Act 13 of 1978

[154] Inserted by Act 17 of 1999

[155] Substituted by Act 19 of 2012

[156] Amended by Act 9 of 1987

[157] Substituted by Act 19 of 2012

[158] Amended by Act 24 of 1997

[159] Amended by Act 17 of 2001

[160] Substituted by Act 19 of 2012

[161] Amended by Act 25 of 1990

[162] Amended by Act 13 of 1978

[163] Substituted by Act 19 of 1991

[164] Inserted by Act 19 of 1991

[165] Inserted by Act 19 of 1991

[166] Substituted by Act 19 of 2012

[167] Substituted by Act 19 of 2012

[168] Substituted by Act 19 of 2012

[169] Substituted by Act 19 of 2012

[170] Substituted by Act 19 of 2012

[171] Amended by Acts 9 of 1987, 46 of 1988 and 19 of 2012

[172] Amended by Acts 9 of 1987 and 19 of 2012

[173] Amended by Acts 9 of 1987 and 19 of 2012

[174] Amended by Acts 9 of 1987 and 19 of 2012

[175] Substituted by Act 19 of 2012

[176] Amended by Acts 9 of 1987, 12 of 1995, 16 of 2004 and 19 of 2012

[177] Amended by Acts 9 of 1987, 16 of 2004 and 19 of 2012

[178] Inserted by Acts 16 of 2004 and 19 of 2012

[179] Inserted by Acts 16 of 2004 and 19 of 2012

[180] Amended by Acts 9 of 1987 and 19 of 2012

[181] Amended by Acts 9 of 1987 and 19 of 2012

[182] Substituted by Act 19 of 2012

[183] Amended by Acts 5 of 1931, 46 of 1988, 8 of 1991 and 18 of 2005; Repealed and replaced by Act 20 of 2007.

[184] Substituted by Act 19 of 2012

[185] Inserted by Act 19 of 2012

[186] Inserted by Act 19 of 2012

[187] Inserted by Act 19 of 2012

[188] Inserted by Act 19 of 2012